

30 MARCH 1948

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Tuesday, 30 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE B. V. A. ROLING,
Member from the Kingdom of the Netherlands and
HONORABLE JUSTICE R. B. PAL, Member from India, not
sitting from 0930 to 1600; HONORABLE JUSTICE HENRI
BERNARD, Member from the Republic of France, not
sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except UMEZU and SHIRATORI, who are represented by
5 counsel. The Sugamo Prison surgeon certifies that they
6 are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Mr. Levin.

9 MR. LEVIN: May it please the Tribunal, there
10 may be a few slight corrections in words and grammar
11 that we have not been able to catch last night or
12 during the day yesterday. We would like to have per-
13 mission to make those corrections nunc pro tunc. They
14 will not in any manner change the context or substance
15 of the summation, and we shall make every effort not
16 to place an undue burden on the reportorial staff.

17 THE PRESIDENT: Submit the application to
18 me in the ordinary way, Mr. Levin. I deal with those
19 matters.

20 MR. LEVIN: I begin on page 43, in the middle
21 of the page.

22 "Preparedness for a Prolonged War" was nothing
23 but the heading of a part of the speech. In this
24 speech he appealed to the people for their spontaneous
25 practice of savings, fully explaining its necessity.

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22 "Preparedness for a Prolonged War" was nothing
23 but the heading of a part of the speech. In this
24 speech he appealed to the people for their spontaneous
25 practice of savings, fully explaining its necessity.

1 This can be easily understood if we read the whole
2 text of the speech, namely, court evidence No. 3338-B.

3 In a section of his speech not recorded in
4 court evidence No. 3338-B detailed explanation is given
5 about the necessity of savings for checking inflation
6 as well as the ways in which the people's savings are
7 to be made. It is evident that the speech aimed at
8 the encouragement of savings by the people. With the
9 extension of the China Incident contrary to his wishes
10 the war expenditure swelled in an alarming degree,
11 necessitating the issuance of huge amounts of national
12 bonds. Under such a situation, unless the bonds were
13 smoothly absorbed by the people Japan could not main-
14 tain its economy and finance, and with inflation
15 threatening at hand, the Finance Minister ought to
16 exert his best effort to prevent it. Enormous amounts
17 of money were spent by the army and the whole country
18 was being flooded with money. Under such circumstances
19 KAYA thought that the best way to absorb the curren-
20 cies and thereby to check inflation was to increase
21 the savings of the people. And the goal of savings
22 increase was several times as much as in normal times.
23 This he stated unequivocally in his speech. He did
24 not like to enforce savings by means of law as he was
25 not, by his nature, inclined to use coercion. He

1 rather considered it harmful to resort to coercion in
2 such a matter, and therefore found it absolutely
3 necessary to inspire the people with a voluntary will
4 to practice savings.

5 Most of the people were getting increased
6 incomes due to the prosperity of munitions industries
7 and were leading an easy life. They did not deny the
8 necessity of savings, but were not so enthusiastic
9 about their savings, being disposed to satisfy their
10 wants instead.

11 The situation being such, it was a most impor-
12 tant duty of the Finance Minister to make the nation
13 savings-minded so that the desired goal of savings
14 could be attained and the collapse of Japan's national
15 economy averted. And it was a difficult job, but
16 should be carried out in order to safeguard the people's
17 living. One of his tasks he had to do to fulfill his
18 duty was this speech. If he had been a man who
19 could afford to resort to coercion to attain his
20 object, he would not have made such a speech as this.
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1 2. It is true that he advocated in his speech
2 that the nation should be prepared against the possi-
3 bility of a prolonged war. But this cannot be construed
4 as signifying that he wanted a prolonged war. It is
5 entirely wrong to infer from it that he was hoping for
6 such a war and inspiring the people with such notion.
7 China, on her part, had been prepared for a protracted
8 war, manifesting her strong will to fight it out to the
9 bitter end and the cabinet at that time could not but
10 believe it. As it was, Japan was of necessity compelled
11 to provide against it. It was necessary therefore for
12 Japan to take such measures as would enable her to
13 withstand a prolonged war in order to save her finance
14 from imminent danger.

15 It is the rule of the world that many undesir-
16 able things happen. Both the individuals and the
17 countries are required to be prepared against them
18 though they do not like it. Such was KAYA's position.
19 It is wrong to conclude that he desired or willed to
20 have a prolonged war because he advocated the neces-
21 sity of preparedness against such a war.

22 3. The people, when they are getting good
23 incomes usually do not think of the necessity of their
24 saving money to safeguard their living. But the
25 necessity of their practicing saving existed. While

1 they were in a position to save a substantial portion
2 of their incomes, they were liable to spend their money
3 recklessly. It was therefore necessary to appeal to
4 them in various ways so as to make them save their
5 money. Should they think that the war would soon end,
6 they would endeavor to do what they were not well
7 disposed to do. KAYA could not help, therefore,
8 expounding the necessity of the nation's preparedness
9 for a protracted war.

10 Reading the part of his speech quoted by
11 the prosecutor we find that what KAYA stated in his
12 speech was quite commonplace in those days. There can
13 be found nothing in it that would give an impression
14 that he had made any special effort to carry through
15 the China Incident vigorously.

16 4. Attention is called to the fact that the
17 said speech was made on April 12, 1938. It was after
18 the China Incident spread fairly ^(a) extensively and the
19 peace effort between Japan and China failed.
20

21 N-9-17.

22 1. KAYA's speech given in exhibit No. 3338-C
23 is one in which he explains in detail about the neces-
24 sity of economy of consumption and increase of savings
25 for the enlightenment of womenfolk. This can be seen

a. T. 30,673.

1 if we read the entire speech. It was an obvious fact
2 in those days that to effect economy in consumption of
3 various commodities and to increase the people's
4 savings was a vital necessity in order to maintain
5 national finance and economy and to prevent inflation
6 in this country. Much depended upon the Japanese house-
7 wives for the attainment of that object; hence, his
8 speech to the women. When we read through the whole
9 text of this speech, we can readily understand that
10 the speech was not intended in any way for warlike
11 propaganda.

12 The prosecutor referred to this as if KAYA
13 had given positive publicity to the aim of the
14 National Mobilization Law in that speech but it is
15 wrong. In this speech, he briefly touched upon the
16 National Spiritual Mobilization Campaign. The said
17 National Mobilization Law was enacted in the year
18 following the year in which he had made that speech.
19 Again the speech in question was, as stated by the
20 prosecutor, made in December 1937 when the China Inci-
21 dent was fairly extended already. Never was it the
22 case where he delivered it wishing for the extension
23 of the incident.

24 It must be remembered that these speeches are
25 not a stenographic record of what KAYA said but were

1 reconstructed by the editor from memory more than a year
2 after they were delivered. KAYA neither examined nor
3 edited them before they were published.

4 In view of this, there is a fair amount of
5 possibility of the existence of some differences between
6 what he actually spoke and what was published as the
7 text of his speeches. The book publishing his speech
8 was issued in September 1938. The China Incident by
9 that time showed a further development than when the
10 speech was delivered. Journalism is generally liable
11 to exaggeration. There is therefore no gainsaying
12 that it is wrong to conjecture what was published had
13 some amount of inaccuracy and exaggeration.

14 2. The court considered that a government's
15 diplomatic announcement made on the occasion of the
16 outbreak of an international dispute or immediately
17 before the commencement of hostilities was liable to
18 be coated with embellishment and not represent the
19 true mind of the government, and on this ground the
20 court often refused to accept such announcements as
21 evidence. There is good reason in this attitude of
22 the court, and we admit its justice. The same concep-
23 tion must justify the fact that "when a war or hostili-
24 ties similar to a war are going on, the government and
25 its officials are very often apt to use strong terms

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24 ties similar to a war are going on, the government and
25 its officials are very often apt to use strong terms

1 in what they have got to say to the public outside the
2 government contrary to or against their will." There
3 are often circumstances in which, while they inwardly
4 abhor the state of hostilities and truthfully wish for
5 its early termination, they cannot openly express what
6 is in their mind. Or there are cases where they find
7 it inadvisable to disclose what is in their mind, as
8 it is feared such disclosure might prove disadvantageous
9 for the realization of their true wishes.

10 It is often seen in international relations
11 that a country, while crying for peace, prepares for
12 war, or while showing a strong attitude as if she were
13 ready for a war, she strives for the maintenance of
14 peace. The best at worst that can be said of KAYA's
15 speeches is that they were the hyperbole of the
16 hustings.

17
18 3. Just like the conception as stated above,
19 it is considered there is justice in the following con-
20 ception, namely:

21 The true mind of the official in the adminis-
22 tration of the national affairs is reflected in his
23 word or action uttered or taken behind the scenes,
24 unknown to the government circles or the public. On
25 the basis of this assumption there is nothing that
might be taken as proof or might induce us to surmise

1 that KAYA ever wished or planned for the outbreak of
2 the China Incident or its extension. On the contrary
3 it has been made clear that he endeavored to prevent
4 its extension, and the dispatch of troops to China and
5 that he grieved over its eventual extension and was
6 placed in a very difficult position on that account.

7 Of the materials furnished to the Court the
8 KIDO diary and SAIONJI-HARADA memoirs have been taken
9 up by the prosecution as evidence best showing the real
10 state of affairs in the Japanese political circles in
11 those days. There is nothing in them that might be
12 taken as suggestive of KAYA's having ever wished or
13 strived for the extension of the China Incident or
14 been militaristic or belligerent. If there were found
15 anything in them suggestive of such a fact, the
16 prosecution must have referred to it as evidence
17 against KAYA, but the fact was they did not.
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1 On the basis of the above conceptions and also
2 judging from his actions during the long period of his
3 service in the Ministry of Finance, we are led to the
4 conclusion that the speeches made by KAYA referred to
5 above represent some of his earnest efforts exerted for
6 the realization of the wishes he had persistently
7 cherished, namely, the prevention of the threatening
8 financial collapse of Japan whereby to keep national
9 finance on a stable basis, and that they were in no way
10 intended for the inspiration of his audience with any-
11 thing like warlike sentiments.

12 If KAYA had been a man whose frame of mind
13 allowed him to have recourse to a strong coercive
14 measure to carry through his purpose, he would have
15 resorted to law and authority, and would never have
16 taken the trouble of busying himself with making speeches
17 in the midst of his pressure of business as a Finance
18 Minister.

19 N-9-18.

20 KAYA had nothing to do with Japan entering
21 into the Anti-Comintern and Tripartite pacts. While
22 no such claim was made by the prosecution, by innuendo,
23 they attempt to infer some responsibility on his part
24 because the Japanese Government entered into those
25 pacts while he was in the service of the government.

1 The prosecution mentioned that KAYA had con-
2 nection with the "Extraordinary War Expenditure Account."
3 As minister in charge of finance, this was only natural
4 and there was nothing illegal about it. The Electric
5 Power Law was mentioned, but nothing was said about
6 KAYA's connection with it except that he was a member
7 of the cabinet. That the Electric Power Law was not
8 a preparation for a war of aggression will, no doubt,
9 be argued in another phase. As far as KAYA was con-
10 cerned, it has already been made clear that he did not
11 know about the Army Five-Year Plans, nor had adopted
12 them in any way, nor had any inkling about a future war
13 of aggression. Even if some had considered the Elec-
14 tric Power Law as a preparation for a war of aggression,
15 there is no evidence that KAYA, too, believed so or that
16 he should have guessed it or that he was informed about
17 it. The prosecution mentioned that the Manchurian
18 Heavy Industry was established and was in operation.
19 What has been said in this connection with the Electric
20 Power Law can be said about this. The prosecution
21 pointed out that the North China Development Company
22 was formed on April 30, 1938. This is a mistake.
23 The company was established in November 1938. (a) Detailed
24 arguments will be made in connection with the North
25

China Development Company.

1 N-9-19. In paragraphs 18 and 19, the prosecution stated
2 that KAYA was "authorized to apply the Temporary Fund
3 Adjustment Law" and that "KAYA directed the investment
4 policies of all banks thereby destroying the last
5 vestige of the autonomous action in banks." We shall
6 point out the mistake in the prosecution's contention
7 and give the facts as they really happened.
8

9 1. We have already shown that KAYA did not
10 know anything about the Army Five-Year Plans, did not
11 adopt them in any way, nor think about a future war
12 of aggression. The First KONOYE Cabinet also did not
13 adopt the so-called Army Five-Year Plans, and it is
14 clear that the above-mentioned law was not drafted in
15 connection with the Five-Year Plans. The Fund Adjust-
16 ment Law was drafted because of the China Incident and
17 not for a future war of aggression. This can be seen
18 from the fact that law was to become void one year
19 after the termination of the China Incident. (b) The
20 one-year grace was to allow for postwar settlements.
21 This law was put into effect in September 1937 or
22 directly after the incident had spread to the Shanghai
23 area and at that time no one thought the incident would
24

25 (b) Ex. 2788, T. 25,045.

~~last another five or six years.~~

1 Witnesses YUKI and AKASHI have testified that
2 the law was drafted to stabilize the economic circle (a)
3 and prevent inflation threatened by the China Incident.

4 The law recognized large capital be turned
5 towards war industries, but this was inevitable for
6 the incident spread wide, contrary to the wishes of
7 the Japanese Government. Capital, however, would have
8 turned toward the war industries without the law, for
9 capital goes where profit is the largest. For that (b)
10 reason, as testified by witnesses YUKI and AKASHI,
11 capital outlay in total sum was put under control to
12 avoid inflation and for the maintenance of an orderly
13 economy.
14

15 The prosecution's contention seems to be
16 that measures adopted because of the China Incident
17 could be applied to other purposes and therefore could
18 be preparations for a future war. However, it does
19 not become a crime unless it is shown that such measures
20 were adopted with intent to use them in a future war
21 of aggression and were actually used for that purpose.
22 It has already been shown that KAYA's hands were full
23 with the China Incident and he had no time or room to
24

25 a. Ex. 3322, T. 30559; Ex. 3323, T. 30569.
 b. Ex. 3322, T. 30559; Ex. 3323, T. 30569.

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1 think of preparing for a future war. We will not go
2 into a general argument, but as far as KAYA was con-
3 cerned there is nothing against him.
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1 2. Witness YUKI, who at that time was
2 Governor of the Bank of Japan, has testified as
3 follows:^{a.}

4 "Again, the decisions of whether or not to
5 give permissions to investment or loans were made at
6 the meeting of a committee formed of members from
7 various government offices concerned and the Bank of
8 Japan. But inasmuch as the criteria by which such
9 decisions were to be made consisted in whether or not
10 the particular industry for which the fund was re-
11 quired was essential in the national emergency created
12 by the China Incident and whether or not there was a
13 prospect of equipments or materials being obtainable
14 for the said industry. The military and the Ministry
15 of Commerce and Industry and other departments of the
16 government which had direct connection with the
17 allocation of materials had the greatest say in making
18 decisions of 'yes' or 'no,' while the Ministry of
19 Finance had little authority, and the actual situation
20 was such that both the Finance Ministry and the Bank
21 of Japan were just to play the part of merely pro-
22 curing funds needed."

23
24 Witness AKASHI, who during the same period
25 was a veteran in the banking circle, has testified as

a. Ex. 3322, T. 30559.

a.
follows:

1 "It had been the most conspicuous feature of
2 Japanese economy since the outbreak of the China
3 Incident, that the material had become the master and
4 the finance the secondary matter."

5 From the above it can be seen that the
6 contention that KAYA directed the adjustment of
7 investment policies is far from correct.

8 3. The accusation that KAYA destroyed the
9 last vestige of the autonomous action in banks is
10 contrary to facts. Witness YUKI and AKASHI have
11 testified that KAYA complied with the wishes of the
12 financial circles and allowed as much freedom as
13 possible.
14 b.

15 Not only that, in the matter of savings
16 campaign KAYA looked to the nation's self-awakening
17 instead of resorting to legal means of compulsion.
18 The two aforementioned witnesses have testified that
19 KAYA's policies were mild and moderate as compared to
20 other war time measures and were regarded with dis-
21 favor by the radical groups and the militarists which
22 led to his resignation. In other words, he was in
23 just the opposite camp from that contended by the
24

25 a. Ex. 3323, T. 30570.

b. Ex. 3322, T. 30559; Ex. 3323, T. 30569.

c. Ex. 3322, T. 30558; Ex. 3324, T. 30571-9.

d. Ex. 3323, T. 30579; Ex. 3329, T. 30602; Ex. 3330, T. 30608.

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the prosecution.

1 The prosecution contended that KAYA
2 "established and operated reserve banks under the
3 direction of his office in China." There is no
4 evidence that such banks were, either directly or
5 indirectly,^{a.} under his direction. Nowhere in the
6 evidence referred to by the prosecution is there any
7 mention that KAYA established and operated banks. We
8 are surprised and astonished that such a statement,
9 not based on any evidence in the record, could
10 possibly have been made by the prosecution. No matter
11 how you look at it, we contend that KAYA had no
12 responsibility in the matter.
13

14 Third Period: N-9-20. The prosecution
15 contended that while KAYA testified that he had no
16 connection with the cabinet nor was he a government
17 official from May 26, 1928 to October 18, 1941, he
18 did admit upon cross-examination that he held various
19 posts appointed by the cabinet.

20 This contradiction arose from a mistake in
21 translation. The original of his affidavit is in
22 Japanese and the part in question in the original
23 reads: "I was not a member of the cabinet nor an
24 official of the government from . . ." This was
25 a. Ex. 840, sec. 115, T. 8444-5.

1 mistranslated to read: "I had no connection with the
 2 cabinet. . ."^{a.} and became the ground for cross-
 3 examination on the part of the prosecution. His reply
 4 to the prosecution's cross-examination did not con-
 5 tradict his testimony for while he held posts appointed
 6 by the cabinet, he was neither a member of the cabinet
 7 nor an official of the government.^{b.} This mistake
 8 has subsequently been rectified by the Language Board.^{c.}
 9 KAYA testified that during this period he was neither
 10 a cabinet member nor an official of the government
 11 to show that he was not in a responsible government
 12 position when the clashes with Soviet Russia took
 13 place, or when the Japanese troops moved into French
 14 Indo-China or when the Tripartite Pact was concluded
 15 or when the greater part of the alleged preparation for
 16 war was made.

17 In short, the seeming contradiction was
 18 caused by mistranslation and in no way affects the
 19 probative value of the testimony.

20 N-9-21. The prosecutor stated that KAYA
 21 made a speech, after his resignation from the post of
 22 Finance Minister, encouraging savings.^{d.} He delivered
 23 such a speech because he considered it imperative that
 24

25 a. Ex. 3337, T. 30639. c. T. 36995.
 b. Ex. 111, T. 30662. d. T. 30679.

1 the people should be minded to practice saving, other-
2 wise a terrible inflation would come upon them as the
3 result of their failure to increase their savings.

4 He feared also that if the people should fail to
5 increase their savings voluntarily, the cabinet
6 which had its finance portfolio held by another man
7 might resort to coercive measures to enforce people's
8 saving. He had it firmly in his mind that such
9 coercive steps should be avoided by all means.

10 Reference to AKASHI's testimony will help one under-
11 stand this.^{a.} The fact that KAYA spoke publicly on
12 the necessity of people's savings even after his
13 resignation shows how enthusiastic he was to prevent
14 inflation.

15 Later he became the chief inspector of the
16 Price Adjustment Committee,^{b.} and exerted his efforts
17 in an attempt to avert inflation since the savings
18 encouragement campaign was going on smoothly on its
19 track. He, who had a ministerial career, willingly
20 accepted the post of the chief inspector of a committee
21 and zealously attended to his work, while many com-
22 mittees were liable to function perfunctorily and
23 frequently were a nominal existence. He could do his

24 a. Ex. 3323, T. 30571.

25 b. T. 30680.

1 job with enthusiasm as his time was free. This also
2 shows how eager he was to prevent inflation. This
3 may have nothing to do with his case, but will serve
4 to aid in understanding the real significance of
KAYA's actions.

5 The prosecution referred to two speeches
6 made by KAYA while he was out of office and called
7 attention to the absence of any remark about the
8 savings in those speeches, hinting as if the state-
9 ment that he was an ardent expounder of savings were
10 a falsehood and as if he were inspiring warlike
11 sentiments. But if one is reminded on what occasion
12 those two speeches were delivered one would easily
13 realize that there is no wonder about the absence of
14 any remark about the question of savings.

15 N-9-22. The prosecution offered two
16 exhibits (exhibit 3339 and 3339-A)^{a.} with respect to
17 KAYA's address delivered in November 1938. We contend
18 the exhibits just mentioned show nothing that he
19 advocated war and therefore, has no criminal character.

20 1. The Japan-China-Manchoukuo Round Table
21 Conference in connection with which the address
22 mentioned was delivered, was held with views of
23 inviting Manchoukuoan and Chinese economic interests
24 a. T. 30686, 30698.
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1 to Japan, having them inspect her industrial and
2 cultural facilities, promoting friendship among the
3 economic interests of the three countries and thereby
4 helping toward mutual cooperation among them.
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2. The Round Table Conference was held under the auspices of purely private economic organizations.

3. The Round Table Conference was composed of economists of the three countries and was not a large gathering. KAYA did not attend any of the numerous meetings held in Tokyo. This is clearly shown by the record.^{a.} The address mentioned in exhibit No. 3339 was made by KAYA at the time he assumed the post of chairman of the preparatory committee of the conference. This address was made neither before the Japan-China-Manchukuo Economic Round Table Conference, nor before any meeting open to the public.

4. Exhibit 3339-A is about the meeting held in Hiroshima, a local city, and, as testified by KAYA, was not a large gathering.^{b.} KAYA testified the speech at Hiroshima was a mere greeting, which the prosecution insisted on calling an address. We do not care to argue with the prosecution as to whether it was a mere greeting or an address, but we would like to say that KAYA said it as a salutation. The last part of exhibit 3339, the beginning of exhibit 3339-A shows clearly that he used the word "greeting" in the speech just mentioned.

5. The contents of the speech indicate that it was not made with the aim of asserting his own

(a. T. 30707.

b. T. 30707.)

1 opinion. He has testified that it was made at a meet-
2 ing of the Sponsors' Preparatory Committee and was a
3 formal address in which the policies adopted by the
4 Government at that time, and what were being generally
5 discussed, were referred to. a.

6 When one examines the contents of his "speech,"
7 it will be understood that they are as he stated and it
8 seems natural for him, assisting with the meeting, to
9 make such statements. He only referred to what was
10 being spoken of generally and as a matter of common
11 knowledge at that time.

12 In addition, what we would like to state now
13 is that according to the court transcript it is recorded
14 that KAYA's testimony concerned exhibit 3338, but it
15 will be well understood that KAYA testified with regard
16 to exhibit 3339 instead. This can be confirmed by re-
17 ferring to the transcript covering redirect examination
18 of the accused KAYA by his counsel. b. The Court ruled
19 that the expression of peaceful intention which diplo-
20 matic authorities made in public is of no value because
21 it cannot be determined as expressing their real in-
22 tentions. Similarly, it will also be a natural con-
23 clusion that his formal address given on such an
24 occasion as stated above cannot be judged as his real
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23 clusion that his formal address given on such an
24 occasion as stated above cannot be judged as his real
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(a. T. 30707.

b. T. 30707.)

1 opinion of the China Affair.

2 KAYA had no knowledge of the fact that his
3 speech was recorded, that is, no procedure was taken
4 that he read the record through and admitted it to be
5 accurate at that time.^{a.} He has testified that while
6 he recollects making a statement at the time, he does
7 not recollect whether he said exactly as recorded in the
8 document. It cannot be said that the document does not
9 contain exaggeration or additions to what he actually
10 said.

11 For reasons mentioned above, we contend it
12 cannot be decided from his "speech" made at the Japan-
13 China-Manchukuo Economic Round Table Conference that he
14 desired the expansion of the China Incident or that he
15 inspired the masses with enthusiasm for a war. On the
16 contrary, his short tenure of office, the uncontradicted
17 fact that he insisted that the matter be settled locally,
18 and finally, his resignation at the request of the
19 Premier speak more eloquently than words that he was
20 opposed to the China Incident.

22 N-9-23.

23 KAYA was president of the North China Develop-
24 ment Company for two years and two months. We shall
25 first show there was nothing criminal about the company.

(a. T. 30683-6.)

1 1. The Company was established for the purpose
2 of economic collaboration between China and Japan and for
3 the mutual benefits of the two peoples.

4 a. The establishment of the Company was not in
5 breach of international law or obligations.

6 b. The Company was not established for the
7 purpose of depriving from China and the Chinese people
8 anything unlawfully, nor work against the welfare of
9 China or its people.

10 c. The Company did not discriminate against
11 nationals of Third Powers nor apply unlawful pressure
12 against them.

13 The above-mentioned facts are clear from the
14 testimony of KAYA and OIKAWA, Genkichi, which was not
15 contradicted.^{a.}

16 The facts, furthermore, are confirmed^{b.}
17 by the prosecution's evidence exhibits 460-A and 3263,
18 and there is no evidence in contradiction.

19 2. The Company was not planned for a war of
20 aggression. Development of the natural resources of
21 North China was a blessing to the people of North China
22 and increased materials for the national defense of
23 Japan as mentioned in exhibit 460-A. To strengthen the
24 national defense of a country is not a crime. In
25 planning any economic measure it is only natural to plan

(a. Ex. 3337, T. 30645; Ex. 2579, T. 21951-4.
b. T. 5253; T. 29820-4.)

1 it so that it will benefit the livelihood of the people
2 and be of use in the defense of the country. Because an
3 economic measure did these two things, it cannot be said
4 that it was done as a preparation for a war of aggression.
5 Nor can it be said that KAYA realized the establishment
6 of the Company was for a war of aggression.

7 If Japan had confiscated the products of North
8 China it would have been a crime. As Japan paid for
9 what it obtained it cannot be a crime even if the pro-
10 ducts it obtained were used for national defense.

11 The Company did not receive any directive from
12 the Japanese Government to point all expansion of
13 production with the year 1941 or thereabouts as the goal,
14 nor did it do so on its own.^{a.} It is clear from exhibit
15 460-A that the Company aimed for a long-term economic
16 development and not for a short-term production.
17 Deficits in the early years were expected and plans for
18 government subsidies to pay dividends on stocks held by
19 private individuals were made and carried out. Invest-
20 ments in subsidiary companies were made on the basis of^{b.}
21 long-ranged development and not for immediate profits.
22 This shows that the Company was not established as part
23 of a plan to wage war in the very near future. It is
24 clear that what the Company did was no more than ordinary
25

(a. Ex. 3337, T. 30646.

b. Ex. 460-A, T. 5253; Ex. 2579, T. 21955-7; Ex. 3337,
T. 30645.)

1 long-ranged economic development. There is no evidence
2 that the Company had the year 1941 or thereabouts as its
3 goal in carrying out its activities.

4 Again it is mentioned that the Japanese Govern-
5 ment could issue to the Company directives concerning
6 national defense, but in fact, the Government did not
7 issue any directive either for national defense or for a
8 war of aggression.

9 3. The prosecution looks at the establishment
10 of the North China Development Company as part of the
11 Cabinet decision of December 24, 1937, and that while
12 there was nothing sinister about the wording of the
13 decision itself, the real purpose was for a war of
14 aggression. As evidence, KAYA's statement to the press
15 as quoted by Goette was adduced. The prosecution's
16 opinion on this point is far from correct.

17 a. The Cabinet decision of December 24, 1937,
18 was a secret document containing the true intentions of
19 the Cabinet. If the document had been intended for
20 public announcement then there might be room to doubt
21 its sincerity, but as the document was a secret document,
22 there was no need to camouflage its meaning.

23 b. KAYA's statement quoted by Goette was made
24 in 1940 and the statement was made about the Material
25 Mobilization Plan of North China at that time. That the

statement was not in reference to the motives of the a.

1 North China Development Company is clear from the record.

2 It might be correctly argued that if the Material Mobil-
3 ization Plan of North China had aimed to supply the
4 needs of the Japanese Army in connection with the China
5 Incident and the needs of the peoples of China and
6 Japan, the products of the companies in which the North
7 China Development Company had financial interest. It
8 was true of the industries in Japan financed by the
9 financial institutions of Japan. Because of this it
10 cannot be justly concluded that all the industries and
11 financial institutions were established on the motive
12 of aggression. The same reason can be applied in the
13 case of the North China Development Company and to judge
14 the nature of the Company from the testimony of Goette
15 is a mistake.
16

17 c. It is clear from the prosecution's evidence,
18 exhibit 460-A, that the North China Development Company

19 was without exception barred from engaging in business
20 enterprises. b. Thus whether it was or was not a confis-

21 cated enterprise, the North China Development Company
22 could not operate it. And there is no evidence to show
23 that the Company either confiscated or operated an
24 enterprise owned by the Chinese.
25

(a. T. 3872.

b. T. 5253.)

1 4. The Company did not control the economy of
2 North China. The prosecution has given the impression
3 that the Company controlled the whole economy of North
4 China, but this is not correct.

5 a. The Company was connected with only a
6 certain portion of the enterprise of North China as
7 mentioned in exhibit No. 460-A and in KAYA's affidavit. a.

8 The Company was not permitted to become concerned in
9 such active industries as general business, agriculture,
10 spinning, weaving, and tobacco, nor in banking or

11 insurance business. b. Furthermore, it was not connected
12 with all the enterprises in the fields it was permitted
13 to make investments. For instance, during the period
14 KAYA was president, the Company was not connected with
15 the famous Kailan Colliery of North China. As the
16 Company was devoid of any power, it could not make in-
17 vestment, or loan, unless such financial aid was
18 solicited.

19 a. As previously mentioned, the Company was
20 merely a financial organ for investments and loans and
21 was not permitted to engage in business enterprises.

22 c. The Company had no power whatsoever against
23 a second party. It had no power of compulsion against
24

25 (a. Ex. 3337, T. 30643; Ex. 460-A, T. 5253.
b. Ex. 3337, T. 30643.)

1 anyone.^{a.} Power against a second party rises out of law
2 and no law giving such power to the Company was enacted
3 either by the Japanese Government or the North China
4 Political Council.

5 d. As stated in exhibit 460-A the purpose of
6 the Company as defined by law, was to co-ordinate and
7 adjust the enterprises of North China, that is enter-
8 prises in specified fields, by means of investments and
9 and loans.^{b.}

10 It can be seen from the foregoing that the
11 Company carried out its activities by means of capital
12 outlay and not by means of force. On this subject matter
13 KAYA has testified as follows:^{c.} "Loans and investments
14 were subject to contracts under which the company ob-
15 taining the financial aid was required to obtain the
16 approval of the North China Development Company in
17 certain prescribed matters in order to avoid over-
18 investment or unwarranted expansion and thus endeavored
19 to bring about a sound and orderly development of the
20 economy of North China. The Company had no right over
21 any industry except those in which it had a financial
22 interest and even then, the rights were limited to those
23 specified in the contracts."
24

- 25 (a. Ex. 3337, T. 30645.
b. T. 5253.
c. Ex. 3337, T. 30645.)

From the foregoing it is clear that co-ordination and adjustment were carried out by means of contracts and not by force.

There is nothing new in the procedure whereby the holding company requires the subsidiary companies to seek its approval on matters prescribed in the contract. It is nothing unlawful or anything to be unduly concerned about.

As to the purpose of the North China Development Company in co-ordinating and adjusting the enterprises, exhibit 460-A has the following to say^{a.} "Co-ordination and adjustment of the operation of the subsidiary companies, as provided in the law concerning the North China Company, is designed to eliminate the possible occurrence of circumstances which may hinder synthesized growth of various enterprises relating to development of natural resources and other industries which will be started in that area."

In reference to co-ordination and adjustment we note the following:

1. In the scope, it covers only a portion of the industries of North China.

2. Its method was not by means of force, but through ordinary business procedure.

(a. T. 5253.)

1 3. The Company was not a state organ having
2 governmental administrative powers, nor did the scope
3 of its activities include the entire economy of North
4 China.

5 It is now clear that the phrase used by Liebert
6 in describing the purpose of the Company, "control and
7 adjustment of the economy of North China," as found in
8 his testimony, is far from correct.
a.

9 We have shown that the nature and activities of
10 the North China Development Company were not of an
11 aggressive nature, nor infringed upon international law.
12 We wish to point out the following which we believe con-
13 firms our conclusion and makes clear the point that
14 there was no responsibility for unlawful acts on the
15 part of defendant KAYA as president of the Company:
16

17 1. As already mentioned, the North China
18 Development Company did not administer the entire
19 economy of North China. Its scope of activities was
20 much smaller than the impression imparted by the
21 prosecution's case. This can be seen from the evidence
22 tendered by the prosecution. Statistics prove our con-
23 tention, but we refrained from introducing any for we
24 believed the matter was too unimportant to waste the
25 Court's time. One point we wish to mention is that the

(a. T. 8474.)

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24 believed the matter was too unimportant to waste the
25 Court's time. One point we wish to mention is that the

(a. T. 8474.)

1 figures in the asset and liability columns for the
2 years 1944 and 1945 are rather large, but this was due
3 to the inflation which raged through China at the time.
4 The figures do not represent true values. We wish to
5 point this out although it was long after KAYA's time.

6 2. The Company did not make any unlawful
7 profits. As mentioned in exhibit 460-A, losses were
8 expected and subsidies were provided for. This is also
9 mentioned in the affidavit of OIKAWA, Genkichi. In
10 section 5-3 of his affidavit, KAYA has testified that
11 during the period he was president, the Company was
12 continuously in the red and paid the private stock
13 holders dividends of not more than six per cent per
14 annum out of government subsidies, that the affiliated
15 companies all made small profits, which when distributed
16 as dividends, were made without discrimination among
17 Chinese and Japanese stockholders.^{a.}

18 3. We believe the prosecution has given the
19 impression that the Company was a monopolistic organ,
20 but the Company was not granted any such power by law.
21 It had none as the lack of evidence on the part of the
22 prosecution shows. KAYA mentions this point in section
23 5-b of his affidavit.^{b.} As already mentioned, the
24 Company did not monopolize the enterprises of North
25

(a. Ex. 3337, T. 30645.

b. Ex. 3337, T. 30644.)

China.

1 4. The Company was not an organ with power to
2 enforce its will, nor was it an organ to command the
3 dictates of the government. It is clear it was not an
4 organ to plan the material mobilization of North China
5 or enforce such a plan. This is mentioned in 5-b of
6 his affidavit.^{a.}
7

8 We now wish to reply to the argument of the
9 prosecution in their summation, E 81-94, which is
10 referred to in II-23, T. 41,035-6.

11 1. The prosecution has contended that the
12 North China Development Company had under its control
13 the iron mining industry with 200 million tons of iron
14 ore, but that was the estimated ores in the mines.
15 Prosecution's witness, Chin Tai-ju has testified that
16 during the period of six to seven years, the total iron
17 ore mined was 4,300,000 tons and at that time there was
18 practically no facilities in North China for smelting
19 the ore. This fact is shown in exhibit 462-A.^{b.} The
20 smelting facilities were gradually established with the
21 financial help from the Development Company. The greater
22 part of the ore was by necessity shipped to Japan and
23 Manchukuo to be made into steel. That Japan and Man-
24 chukuo shipped back to North China steel many times more
25 (a. Ex. 3337, T. 30643.
b. T. 5278.)

45,793

in value than the ore shipped out is clear from the
statistics on export.

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1 I proceed with paragraph 3 on page 79.

2 (The following paragraph, not read,
3 was copied into the transcript as follows:

4 2. The prosecution has contended that the
5 productive industries of North China were taken over
6 by the stock companies, but as already stated, the
7 field of investments of the North China Development
8 Company was limited. It was not permitted to make
9 investments in every industry and even in the permitted
10 fields, to a limited number of companies and Chinese
11 investments in the affiliated companies were treated
12 on the same basis as Japanese investments. There is
13 no evidence of unfair treatment as far as North China
14 was concerned. There is no evidence that the amounts
15 of its investments in the affiliated companies were
16 illegal.)

17 3. Goette has testified about the coal
18 shortage in Peiping and gave the impression that the
19 shortage was caused by the North China Development
20 Company. What Goette tried to convey was not true.

21 The area around Peiping produced much coal,
22 but the North China Development Company had nothing
23 to do with the coal produced there. This can be seen
24 by looking at the list of subsidiary companies tendered
25

1 by the prosecution. (a) The coal mines in which the
2 North China Development Company had financial interests
3 were all located several hundred miles away from
4 Peiping.

5 The coal mines around Peiping and mines
6 in the other districts were from time to time molested
7 by bandits and because of unsatisfactory police
8 protection, production and transportation of coal were
9 often hampered. Shortage of coal in Peiping for the
10 above reasons was met by bringing in coal from distant
11 areas, but due to the fighting going on in certain
12 areas and due to the wreckage of railroads by the
13 bandits, this was not always accomplished, and made
14 temporary shortages inevitable.

15
16 If Japan had taken out large amounts of coal
17 in spite of the needs of North China, then other cities
18 and in fact, the whole of North China would have
19 suffered coal shortages. Such was not the case, nor
20 has Goette testified about it.

21 4. The prosecution has pointed out that
22 the amount of salt, coal and steel (mistake for iron
23 ore) exported to Japan greatly increased and that this
24 shows Japan controlled the economy of China and tried
25 to give the impression that the North China Development

1 Company had some kind of connection in the matter.
2 This contention of the prosecution is not correct.

3 a. The prosecution's figures of 1945
4 show amount in money value. China at that time
5 was suffering from a bad inflation and the prices
6 of goods were in astronomical figures. Therefore,
7 the increase in money value does not mean increase
8 in goods.

9 b. In spite of the high prices in China,
10 Japan endeavored to maintain the Chinese currency
11 by placing the yuan on par with the Japanese yen. This
12 worked to great disadvantage to Japan, but was done
13 to bring about economic cooperation. The comparison
14 made by the prosecution is meaningless.

15 If survey is to be made on the export
16 statistics, the export-import between Japan and China
17 from 1931 to 1936 is about the same, but from the
18 year 1937, when the China Incident started, to 1941,
19 export from Japan to China exceeded greatly the import
20 into Japan from China. It is clear that China received
21 more from Japan than she shipped to Japan. In other
22 words, the balance was in favor of China. It is clear
23 from the export-important statistics that while China
24 shipped a part of the raw materials, she received in
25 return necessities in the form of manufactured goods.

1 The conclusion of the prosecution is in error. In
 2 fact, the statistics show the contrary, and we commend
 3 the table at the bottom of page 82 to the attention
 4 of the Tribunal. (a)

5 After 1942, while Japanese goods were cheap
 6 in price, Chinese goods were high. Therefore, in
 7 yen the imports from China greatly increased. This,
 8 however, does not show the amount and value of goods
 9 exchanged. Japanese goods were shipped cheaply to
 10 China where the profits were used to bolster the
 11 Chinese currency.

(a) Ex. 467 Year	Export from Japan to China	Export from China to Japan
1931	155 million yen	145 million yen
1932	141 " "	102 " "
1933	108 " "	113 " "
1934	117 " "	119 " "
1935	148 " "	133 " "
1936	159 " "	154 " "
1937	179 " "	143 " "
1938	312 " "	164 " "
1939	455 " "	215 " "
1940	681 " "	338 " "
1941	629 " "	433 " "

c. Mention is made of the North China

1 Telephone and Telegraph Company. As stated by the
2 prosecution, this Company was established on July
3 30, 1938. The North China Development Company was
4 established after that, that is, in November of
5 1938. This shows that the North China Development
6 Company had no connection with the establishment
7 of the North China Telephone and Telegraph Company.

8 We have shown in our argument on the North
9 China Development Company that there was nothing
10 criminal about the Company, especially during the
11 presidency of KAYA, and this shows no criminal
12 responsibility on the part of KAYA.

13 We now wish to reply to the argument in II-23
14 in which the prosecution remarked that employees of
15 this company had been invited by the Chinese. It is
16 true that the Japanese employees had been enjoying
17 the good will of the Chinese but none of them had
18 been invited by the Chinese to China. The prosecutor
19 used the word "officers", but neither the directors
20 nor the Japanese employees were Japanese government
21 officials.

22 It was also said by the prosecutor that Mr.
23 KAYA's mission as its president had been to furnish
24 financial aid to the Japanese troops in their operations
25

c. Mention is made of the North China Telephone and Telegraph Company. As stated by the prosecution, this Company was established on July 30, 1938. The North China Development Company was established after that, that is, in November of 1938. This shows that the North China Development Company had no connection with the establishment of the North China Telephone and Telegraph Company.

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It was also said by the prosecutor that Mr. KAYA's mission as its president had been to furnish financial aid to the Japanese troops in their operations

1 in Manchuria and China, whereas the fact was that the
2 Japanese troops were entirely dependent on the money
3 supplied by the Japanese Government.

4 The president of the Development Company
5 never extended even a sen of pecuniary help to the
6 Japanese troops, nor is there found any evidence to
7 show his extension of such a help. The fact was
8 that, far from helping others, the said company
9 was obtaining subsidies from the Japanese Government
10 due to the red-ink situation of its finance. (a)

11 The prosecution, in II-23, stated that
12 "according to KAYA's testimony before this Tribunal,
13 the officers of the North China Development Company
14 were in China upon the invitation of the Chinese, and
15 the invasion in March of the Japanese armies in
16 Manchuria and North China was an excursion put on by
17 the Chinese for the entertainment of the Chinese."
18 If this case were not so serious I would think that
19 my dear friend and colleague from my home state was
20 attempting to be facetious, but I merely remind the
21 Tribunal that there is no evidence by KAYA in this
22 record which bears out this statement. I believe the
23 statement was an error or a misapprehension.
24

25 The prosecutor further stated that he had

(a) Ex. 3337, T. 30,645; Ex. 460-A, T. 5253; Ex. 2579,
T. 21,951-4.

1 the knowledge of the fact that the Japanese Army
 2 had forcibly taken over Chinese industries and were
 3 operating these industries to support Japanese war
 4 efforts. KAYA it is true, was aware of the fact
 5 that Japanese troops had supervised some of the
 6 Chinese enterprises, but never did he engage in the
 7 operation of any of such enterprises. ^(b) He was
 8 told that it was to maintain order and to give
 9 employment to Chinese people that the Japanese troops
 10 had taken over supervision of Chinese enterprises.
 11 Therein can be found nothing that might establish.
 12 KAYA's responsibility for crime.

13 One of the most important facts whereby
 14 to judge what responsibility Mr. KAYA had as the
 15 president of the Company is that the said Development
 16 Company was under the direction and supervision of
 17 the China Affairs Board and was not permitted to act
 18 on its own initiative or judgment. ^(c) The president
 19 of the Company was an administrator pure and simple.
 20 He was neither a man holding final responsibility
 21 for the establishment of an economic policy in North
 22 China nor one in a position to act as an intermediary
 23 assistant. As a matter of fact there is no evidence
 24 of his action in that direction.

25 (b) Ex. 3337, T. 30,645; Ex. 460-A, T. 5253, T. 30,601-4.
 (c) Ex. 3339, T. 30,645; Ex. 460-A, T. 5253;
 Ex. 455, T. 5183

1 The prosecutor in his summation has classified
2 the defendant's criminal responsibility into three
3 categories, but the president of the Company does
4 not fall under any of them.

5 In Appendix E of the Indictment it is mentioned
6 that in 1939 KAYA was an advisor to the Bureau of
7 Chinese Affairs (Sina Jimukyoku) but no evidence
8 is given for it. In the organization of the Bureau
9 of Chinese Affairs there was in existence no such
10 post as advisor. (a) This shows the fact that he was
11 not in a position to participate in the drawing-up
12 of the economic policy for North China. In KAYA's
13 personal history there is found nothing to indicate
14 that he was ever in such a position. (b) It is sheer
15 misstatement.

16 Conceding that the nature and action of the
17 North China Development Company were such as would
18 constitute a crime, KAYA in his capacity as its
19 president was not responsible for it. Not less so
20 since the Company itself did nothing criminal.

21 There is no evidence of criminal act on the
22 part of KAYA. On the contrary, evidence shows that
23 KAYA rescued the people of North China from famine. (c)
24 What he did on that occasion was, considering the time,

- 25 (a) Ex. 455, T. 5183.
(b) Ex. 111
(c) Ex. 3337-S, T. 30,646-7.

1 a very difficult task outside of his responsibility.
2 It shows his friendship toward the Chinese people
3 and his intention when he became president of
4 bringing about close collaboration between China and
5 Japan.

6 Fourth Period

7 KAYA has always hoped for the maintenance
8 of peace with the United States, Great Britain and
9 other countries.

10 The prosecution has failed to tender any
11 evidence to show that KAYA was a party to the planning
12 of the war against the United States and other
13 countries as charged before the time (October 18, 1941)
14 he joined the TOJO Cabinet. KAYA had always harbored
15 a strong desire to maintain peace and avoid war with
16 the United States. (Peace with the United States
17 naturally meant peace with Great Britain, Dutch
18 Netherlands and other countries and hereafter peace
19 with the United States will mean peace with the United
20 States, Great Britain, Dutch Netherlands and other
21 countries.)
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1 His strong desire for peace before entering
2 the TOJO Cabinet is shown in the testimony of UCHIDA,
3 Nobuya, TOYODA, Teijiro, who was Foreign Minister in
4 the Third KONOYE Cabinet, his good friend GOTO,
5 Takanosuke and of KAYA, Okinori.^a The testimony
6 of these three individuals rising out of intimate
7 talks with the defendant KAYA shows how deeply he
8 harbored the desire for peace with the United States.
9 When the voice of the militarist and the rightest
10 groups became stronger and stronger and when it came
11 to be rumored around that the Japanese-American
12 negotiations were being stumped with difficulties,
13 KAYA, as one of the intellectual moderates, could not
14 keep his earnest desire for peace locked in his heart.
15 He repeated his feelings to his friends. At the time,
16 he was president of the North China Development
17 Company and was not a member of the Cabinet, his
18 feelings were expressed as a private citizen to his
19 friends in private conversations and not in public
20 speeches or as a government official and there can
21 be no room for doubt as to his sincerity. That he
22 sincerely hoped for peace with the United States is
23 also shown in other evidence. It becomes clear from
24 the conversation between TOJO and KAYA at the time
25

a. Ex. 3325, Tr. 30585; Ex. 3328, Tr. 30598;
Ex. 3330, Tr. 30609; Ex. 3337, Tr. 30648.

1 KAYA received an invitation to join the TOJO Cabinet.
2 TOJO asked KAYA over the telephone to join his
3 cabinet as Finance Minister. TOJO was in fact the
4 representative of the Army and it was generally
5 believed at that time that the Army was in favor of
6 a strong attitude against the United States. KAYA
7 had no way of learning any more about the actual
8 condition of the negotiations, its past history or
9 of the attitude of the Army in regard to the negotia-
10 tions except from current rumors. TOGO has testified
11 that as the Japanese-American negotiations were strictly
12 secret he did not know about them.^a

13 KAYA felt he was qualified for the post for
14 he was a recognized financial expert. However fitted
15 he felt for the post of Finance Minister he did not
16 desire to join the cabinet if TOJO was determined on
17 war. KAYA questioned TOJO on three points, to which
18 TOJO replied:
19

20 1. That he had no intention of waging a war
21 with the United States; that he would continue the
22 Japanese-American negotiations and endeavor to reach
23 a peaceful settlement.

24 2. That in order to make the maintenance of
25 peace with the United States possible, he would

a. Ex. 3337, Tr. 30648; Ex. 3646, Tr. 35674.

endeavor toward closer cooperation between the Supreme Commands and the Cabinet.

1 Needless to say, KAYA was very much sur-
2 prised and pleased at the first reply for public
3 opinion was that the Army might start a war any day.
4 (KAYA did not know about the talks at the Ogikubo
5 Conference nor the reasons back of the resignations
6 of the Third KONOYE Cabinet, nor that TOJO was com-
7 manded by the Emperor to revoke the September 6th
8 Decision and start with a clean slate. He was not a
9 politician and did not know about the inside workings
10 of the political circle.)
11

12 That TOJO would exert his effort to bring
13 about closer relations between the Cabinet and the
14 Supreme Commands was indeed an important point, for
15 in Japan the Supreme Commands existed as a separate
16 organ from the Cabinet. The Supreme Commands had the
17 power to move troops as it saw fit. Since the Man-
18 churian Incident the people were of the belief that
19 the Supreme Commands could move troops at its own
20 free will and disregarding the wishes of the Cabinet,
21 which led to warlike clashes. Such incidents caused
22 much concern among the people. Considering the con-
23 ditions at the time it was extremely important for
24 the Cabinet to maintain peace and to avoid such lack
25

of cooperation on the part of the Supreme Commands.

1 3. In answer to the third question TOJO
2 replied that he fully agreed with KAYA that the new
3 Cabinet should leave aside ideology and adopt policies
4 in keeping with the time and existing conditions.
5 This point was also very important if peace was to
6 be maintained. Heretofore, the military and the
7 rightest groups had been insisting that the Government
8 should follow radical policies based on the so-called
9 ideology such as totalitarianism and controlled
10 economy. At home, these ideologicistic policies
11 amounted to a radical turn toward militarism. Abroad,
12 it meant a stiff front. It meant if TOJO turned a
13 deaf ear to the ideological demands of the militarist
14 and rightest groups, it would be an important step in
15 avoiding war. The fact that KAYA had pressed this point
16 shows KAYA was nonmilitarist and nonrightest in his
17 strong desire for peace.
18

19 TOJO's assurance satisfied KAYA. If the
20 Prime Minister-to-be was nonmilitarist and nonrightest,
21 he would naturally have agreed to KAYA's views, but
22 then he would have had a difficult time putting the
23 theories into practice for it was certain he would
24 have received strong pressure from the militarist and
25 rightest groups. However, the Prime Minister-to-be

1 TOJO was a military man having great influence among
2 the military circles and he was in a better position
3 than a nonmilitarist to put such theories into prac-
4 tice. A great deal more could be expected from him
5 than from a nonmilitarist or nonrightest. Even if he
6 were not able to control the militarists completely,
7 in reality he was the most suitable man to control
8 the militarists and for him to harbor such ideas was
9 most promising and under the existing condition the
10 most could be expected from him.

11 KAYA agreed to join the TOJO Cabinet only
12 after receiving from TOJO his full assurance on the
13 above-mentioned three points. This fact is covered by
14 KAYA's testimony and by the testimony of GOTO, Taki-
15 nosuke, KOBAYASHI, Seizo and YUKI, Toyotaro.^a The
16 latter three witnesses have testified that they heard
17 from KAYA shortly after he joined the Cabinet; that he
18 joined the Cabinet only after receiving full assurance
19 from TOJO that he, TOJO, had no intention of starting
20 a war; that the new Cabinet would endeavor to settle
21 the Japanese-American negotiations peacefully. The
22 testimony of these three was offered without any cross-
23 examination from the prosecution. TOJO, himself, has

24 a. Ex. 3337, Tr. 30648-9; Ex. 3322, Tr. 30556;
25 Ex. 3329, Tr. 30603; Ex. 3330, Tr. 30609.

1 testified that both KAYA and TOGO had pressed the
2 point regarding continuation of the negotiations and
3 an endeavor toward a peaceful settlement before the
4 two had agreed to join the Cabinet.^{a.}

5 That TOJO gave TOGO the same assurance that
6 he would endeavor to maintain peace at the time TOGO
7 joined the Cabinet has been brought out in the cross-
8 examination of the prosecution's witness SUZUKI, Tomin
9 by TOGO's counsel.^{b.} The foregoing clearly shows that
10 up to the time KAYA joined the TOJO Cabinet as its
11 Finance Minister, he did not participate in any con-
12 spiracy to wage a war of aggression against the
13 United States, Great Britain, Dutch Netherlands and
14 other countries.

15 N-9-25.

16 The prosecutor in II-25 expresses his doubt
17 of KAYA having peaceful intentions when he entered
18 the Cabinet and gives a few reasons to substantiate
19 such doubt. Now we wish to point out the error of
20 the prosecutor in his judgment.

21 1. The prosecution has stated that while
22 KAYA had put up a constant fight against the swelling
23 budget demands of the military, he saw his efforts
24

25 a. Ex. 3655, Tr. 36315.
b. Tr. 1217.

1 consistently defeated. His efforts, however, were not
2 altogether in vain but bore some fruit, for had it
3 not been for his exertion, the military budget
4 requirements would have easily run into more appalling
5 figures. This is as referred to in N-9-5, N-9-6 and
6 N-9-11. KAYA did not think that he could carry his
7 point and restrain the increase of the military
8 budget requirements as he desired, but believed that
9 he was better able to check to some extent the exces-
10 sive demands of the militarists than any other
11 Finance Minister. This will be admitted as true by
12 perusal of our explanation given previously.
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2. The prosecutor stated that KAYA had been aware of militarism in Japan being uncontrollable. Of course KAYA did not think that he was powerful enough to restrain completely the militarists who were so mighty in those days. But he did think that he possessed more ability than any other Finance Minister who could easily follow the dictates of the military, to check the militarists heading toward danger.

3. The Tripartite Alliance among Germany, Italy and Japan had already been signed in the previous year, and Japan had been steadily proceeding on a path of aggression -- so stated the prosecutor. But whether the Tripartite Alliance and Japan's expedition were aimed at aggression was a matter not quite clear to KAYA, who was not an ordinary politician but was absorbed in the affairs of the North China Development Company, being outside of the government. It was, however, because he felt, according to what was rumored in those days, the existence of tension between America and Japan that might precipitate a war between these countries that he confirmed TOJO's intentions of maintaining peace and his policy for ensuring it when he was approached by the latter to enter his cabinet. As stated before, he joined the cabinet in a comparatively favorable situation.

1 4. The prosecutor further expressed his
2 doubt as to KAYA being confident of his ability to
3 guide the country in a peaceful direction.

4 It was possible that he had no absolute con-
5 fidence in such ability. There is no wonder about
6 it. In those days it was advertized in this country
7 that Japan was being challenged to a war by foreign
8 countries, though it might be a mistake, but the
9 fact was such talks were widely circulated in this
10 country then. There were heard various Jingoistic
11 arguments by militarists and rightist elements. In
12 such an atmosphere prevailing throughout the country
13 it was but natural that he could not be confident of
14 his absolute ability to shift his country's course in
15 a peaceful direction.

16 But since TOJO, who was regarded as the most
17 Jingoistic, pledged his exertion towards a peaceful
18 settlement of the American-Japanese controversy in his
19 talk with KAYA, he believed that there was hope for a
20 peaceful settlement of the negotiations and thought
21 that the realization of his hope could best be achieved
22 by his rendering the best cooperation with TOJO's
23 effort, thereby to increase as much as he could the
24 possibility of maintaining peace between the two
25 countries. By so doing he thought he could better

1 serve his country and the cause of peace than stand-
2 ing aloof as a mere onlooker.

3 5. The prosecutor further stated that the
4 Manchurian Incident had been a prelude that had event-
5 ually developed into a virtual war with China, but we
6 do not wish to argue as to whether or not the prose-
7 cution's point of view is correct. But since he had
8 surveyed the course of events throughout the Manchurian
9 Incident and the China Incident, KAYA confirmed with
10 TOJO about the relations between the cabinet and the
11 Supreme Command before joining his cabinet. He was
12 thus gravely concerned about averting the danger of
13 war.

14 6. Again, the prosecutor charged that KAYA
15 concerned himself in the plans of conversion of peace-
16 time industries to war munitions industries, but the
17 fact remains that during the ten months or thereabouts
18 in the early days of the China Incident he was engaged
19 in financial administration, while the various indus-
20 tries and munition production were affairs with which
21 the Ministry of Commerce and Industry and the Ministries
22 of War and Naval Affairs were concerned, and the in-
23 dustrial planning was a task assigned to the Planning
24 Board, and not to the Finance Ministry. We do not
25 deny that the financial administration handled by the

1 serve his country and the cause of peace than stand-
2 ing aloof as a mere onlooker.

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5 ually developed into a virtual war with China, but we
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7 cution's point of view is correct. But since he had
8 surveyed the course of events throughout the Manchurian
9 Incident and the China Incident, KAYA confirmed with
10 TOJO about the relations between the cabinet and the
11 Supreme Command before joining his cabinet. He was
12 thus gravely concerned about averting the danger of
13 war.

14 6. Again, the prosecutor charged that KAYA
15 concerned himself in the plans of conversion of peace-
16 time industries to war munitions industries, but the
17 fact remains that during the ten months or thereabouts
18 in the early days of the China Incident he was engaged
19 in financial administration, while the various indus-
20 tries and munition production were affairs with which
21 the Ministry of Commerce and Industry and the Ministries
22 of War and Naval Affairs were concerned, and the in-
23 dustrial planning was a task assigned to the Planning
24 Board, and not to the Finance Ministry. We do not
25 deny that the financial administration handled by the

1 Finance Ministry had indirect relation with such
2 affairs, but since in those days the China Incident
3 had developed fairly extensively contrary to his
4 wishes, he could not do otherwise than letting them
5 go on to some extent as they had been. The point is
6 that he had never concerned himself with any plan
7 or action of positively helping them go in that direc-
8 tion.

9 7. It is stated by the prosecutor that
10 KAYA himself had advocated the policies of meeting the
11 demands of the military first, but the real fact on
12 this point is as mentioned in the Second Period of
13 this summation, and the prosecutor's statement is
14 clearly incorrect.

15 The military currency for use in the Southern
16 Regions was prepared and printed before the outbreak
17 of the Pacific War.

18 We do not wish to argue whether the people
19 who prepared the military currency did so as part of
20 the conspiracy or did so because they considered the
21 preparation vital and necessary in case of a war in
22 self-defense, for as far as KAYA was concerned, it
23 was not as part or preparation for a war of aggression.
24 This is clear from evidence tendered.
25

THE PRESIDENT: We will recess for 15 minutes.

(Whereupon, at 1045; a recess was
taken until 1100, after which the proceed-
ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Levin

4 MR. LEVIN: Mr. President, I continue reading
5 at page 99:

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Witness YOSHIDA has testified as follows:^a

1 "1. I, YOSHIDA, Tosuke, graduated from the
2 Law Department, Tokyo Imperial University in 1926,
3 and immediately entered the Finance Ministry. I was
4 Chief, Treasury Section, Finance Bureau, Finance
5 Ministry, from January 1, 1941 through October, 1942.
6 Therefore, I have full knowledge of the procedure
7 concerning military notes.
8

9 "2.

10 "3. In January, 1941 the Army requested the
11 Finance Ministry to take steps for printing and manu-
12 facturing military notes with denominations in foreign
13 currencies of the southern regions. Whereupon, in the
14 same month, a Finance Ministry decision on the prepara-
15 tion for the issuance of military notes with foreign
16 currency denominations was made, and a printing and
17 manufacturing order was placed with the Printing Office,
18 a Government organ under the direct supervision of the
19 Cabinet. Around May of the same year certain of the
20 said military notes had been printed and manufactured.
21 Printing and production of same was also continued
22 thereafter.
23

24 "4. About the middle of October of the same
25 year, the Army requested the Finance Ministry to take

a. Ex. 3025, T. 26,972-75

1 necessary measures for dealing with said military notes.
2 We, the staff of the Finance Ministry, were working on
3 the draft measures relating thereto. In the meantime a
4 Cabinet change took place on 18 October 1941, with
5 Mr. KAYA, Okinori as the new Finance Minister. On
6 22 October we completed the drafting of a document
7 entitled 'the issuance of military notes with foreign
8 currency denomination,' which was to be submitted for
9 approval to the ministers concerned. The draft was
10 passed upon by the respective bureaus concerned in the
11 Finance Ministry and went to Mr. KAYA, the new Minister.

12 "Mr. KAYA showed deep concern about the passage
13 in the summarized particulars relative to the issuance
14 of the military notes with foreign currency denomina-
15 tions in the said draft that reads: 'Military notes
16 with foreign currency denominations shall be issued,
17 preparing for the eventuality of our taking military
18 operations in South Seas Regions, when they shall be
19 used by the armed forces concerned, in their payment
20 of military expenditures.'

21 "He warned maybe this passage is not erroneous,
22 but it is inadequate to fully express what the drafting
23 authorities are intending. The Army requests that the
24 military notes prepared beforehand, probably because
25 it fears that exigencies cannot be met by setting about

1 the business in a hurry, just when hostilities have
2 begun. But our country has by no means decided to
3 wage any war. The meaning of drafting this document,
4 therefore, shall be that we want to be provided with
5 measures relating to military notes, in advance, just
6 as a sort of general preparedness to cope with an
7 unexpected eventuality. The document shall make clear
8 the above-said purport and record what is truly meant
9 by the drafters.

10 "Upon this, the Ministry, on 29 October, made
11 out and decided upon a document recording the import
12 of Minister KAYA's remark, and annexed it as a refer-
13 ence to the end of the above-mentioned document for
14 approval, entitled, 'the issuance of military notes
15 with foreign currency denominations.' This was sent
16 around to and approved by the respective Ministries
17 concerned. After being thus approved, the document
18 including the said reference was kept in the Treasury
19 Section where I worked.

21 "5. The 'issuance' of military notes, as
22 mentioned in the aforesaid document, means the crediting
23 by the Bank of Japan to the 'other Government deposit'
24 at the Bank, of the amount of military notes manufactured
25 by the Cabinet Printing Office and received by the Bank
from the said Office."

1 Exhibit 3026 is the reference which was made
2 in the afore-mentioned testimony, and states as follows: ^a

3 "The issuance of military notes with foreign
4 currency denominations for the use in the Southern
5 Area military operations.

6 "In view of the present international situations
7 and if in case when war plans in the Southern Area are
8 made for an unexpected eventuality in the future; and
9 considering a necessity which may arise in that con-
10 tingency, the issuance of military notes in foreign
11 denominations shall be made as preparatory measures
12 in order to provide for payment of military expenditures
13 of the unit concerned according to the following general
14 outlines.

15 "Note: The issuance of military notes in the
16 past was decided upon by the cabinet conference, due to
17 the fact that they were issued just at the time of their
18 actual use. The present issuance, however, being a mere
19 preparatory measure conceived for an unexpected event-
20 uality in the future, is decided upon by the ministers
21 concerned only, pending report to the cabinet conference
22 if by any chance an emergency truly happens to necess-
23 itate their actual use."

24 From the evidence referred to, the following

25 a. T. 26,980-1

1 are clear:

2 1. Preparation of military currency was started
3 in January 1941 and the Finance Minister at this time
4 was not KAYA.

5 2. What the Finance Ministry did in reference
6 to military currency was done in compliance with request
7 by the War Ministry.

8 3. There is nothing to indicate that the
9 decision for war was already made.

10 4. The decision for preparations to issue
11 military currency, manufacture of printing plates and
12 the actual printing and storage of same were made
13 before KAYA assumed his post.

14 5. The clerical tasks in connection with the
15 military currency at the Finance Ministry were already
16 routine business before KAYA became Finance Minister.

17 6. In compliance with the request of the Army,
18 officials of the Finance Ministry were already at work
19 drafting the documents on rules concerning military
20 currency before KAYA became Finance Minister.

21 7. KAYA directed the officials of the Finance
22 Ministry to attach a memorandum to the documents they
23 had prepared, making clear the following points:
24

25 a. The documents were not based on a decision
to wage war against the United States, etc.

1 b. The documents were not a decision to wage
2 war.

3 c. They were not made in hope or in expecta-
4 tion of a war.

5 d. They were not a preparation for a planned
6 war.

7 e. The decision was based on the following
8 thought: "In view of the present international situa-
9 tions", and "being a mere preparatory measure conceived
10 for an unexpected eventuality in the future".

11 8. The actual use of the military currency
12 was not decided on at that time.

13 The above-mentioned points have not been contra-
14 dicted and there 's no evidence to the contrary.

15 The document on military currency did not
16 decide on the actual use of the military currency.
17 This can be clearly inferred from Exhibit 3026.

18 The title of one of these documents is, "The
19 Issuance of Military Currency." The word "issue" is
20 generally understood to mean putting the currency in
21 use, but "issue" in this case did not have the same
22 meaning. "Issue" here meant that the Bank of Japan was
23 to book the military currency in a separate account as
24 differed from the general government account. It was
25 merely a step for the Bank of Japan in placing the

1 b. The documents were not a decision to wage
2 war.

3 c. They were not made in hope or in expecta-
4 tion of a war.

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6 war.

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8 thought: "In view of the present international situa-
9 tions", and "being a mere preparatory measure conceived
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19 Issuance of Military Currency." The word "issue" is
20 generally understood to mean putting the currency in
21 use, but "issue" in this case did not have the same
22 meaning. "Issue" here meant that the Bank of Japan was
23 to book the military currency in a separate account as
24 differed from the general government account. It was
25 merely a step for the Bank of Japan in placing the

1 military notes under the Bank's custody. It did not
2 mean paying out. Difference in meaning of a term from
3 that generally understood often occurs when technical
4 matters are concerned, such as was the case with the
5 "issue" of military currency. This is evident from
6 the following:

7 1. Affidavit of witness YOSHIDA at Section 5,
8 which we have already quoted.

9 2. Article 6 of directive from the Finance
10 Minister to the Bank of Japan covering procedures in
11 dealing with military currency, states as follows:^a

12 "The Bank of Japan, upon receipt of the foreign military
13 currency in pursuance of the provisions of the preceding
14 Article, shall accept the same as a separate deposit
15 and shall settle it under the item "amount of issuance
16 of the war-notes" in the items of the combined ledger
17 of the Treasury, provided that the acceptance value of
18 the said separate deposits shall be in accordance with
19 the appended table."

20 The reference in Exhibit 3026 was drafted at
21 KAYA's instruction four years before the termination of
22 the war, that is, before the Pacific War began. It was
23 drafted at a time when KAYA did not dream there would be
24 a trial such as the one before this Tribunal. This
25

document is a "top secret" document of the Japanese Government (it is not a notice to the Bank of Japan), and there was no need of camouflaging in the document the real intention of the government and no need of making any gesture to the Japanese public or to foreign countries. The probative value of this document, therefore, is most high, and it clearly shows that KAYA was not party to any conspiracy, if there was one.

The situation in reference to military currency, we believe, has been made clear by the facts already mentioned, but to make it clear from another angle, we would like to briefly describe the internal political situation at the time the draft in reference to the "issuance of military currency" decided on October 31 and the attached memorandum directed by KAYA drafted on October 29, 1941.^a

1. TOJO announced at the Liaison Conference of October 23, 1941 that the new Government would revoke the Imperial Conference decision of September 6th and would start from scratch in an endeavor to bring the Japanese-American negotiations to an amicable settlement.^b

2. At the time KAYA joined the TOJO Cabinet on October 18, he pressed and received TOJO's assurance that every effort would be made to conclude the

a. Ex. 3025, T. 26,974

b. Ex. 3444, T. 33,018; Ex. 2915, T. 25,909

Japanese-American negotiations^a

1 3. At the Liaison Conference on November 1,
2 1941 the Supreme Command made the proposal that if the
3 negotiations failed to show sign of a settlement by the
4 end of November, to commence making preparations for
5 operations immediately. KAYA and TOGO argued against
6 the proposal and obtained a day's grace to think over
7 the matter.

8 KAYA communicated his assent to TOJO the fol-
9 lowing day.^b

10 4. The decision for war against the United
11 States and Great Britain was made after the Hull note
12 was received.

13 The above facts show that at the time the
14 "issuance of military currency" was decided on, the
15 Japanese Government was not decided on war. As far as
16 KAYA was concerned, as a member of the Cabinet, he was
17 exerting his every effort to avoid war and the memorandum
18 is a clear indication of his desire to avoid war.

19 We shall now discuss why KAYA did not reject
20 the War Ministry's request to establish a procedure of
21 handling military currency. The reasons were as follows:

22 1. When KAYA assumed his post as Finance
23 Minister, matters concerning military currency were
24

- 25 a. Ex. 3337, T. 30,650
 b. Ex. 3337, T. 30,651-4
 c. Ex. 3337, T. 30,655

already part of the routine work of the Finance Ministry.

1 Work on the military currency was started ten months
2 before KAYA assumed his post, but it was not sufficient
3 reason why KAYA agreed to the Army's request. If KAYA
4 had believed it was a preparation for war, he would
5 not have agreed to it.

6 2. The international situation at the time
7 was precarious and Japan was feeling the effect of the
8 pressure of the ABCD encirclement. The Supreme Command,
9 as evidence shows,^a felt the danger of an attack from
10 the United States and Great Britain, and it was only
11 natural for KAYA to be made conscious of this danger at
12 the Cabinet and Liaison Conference meetings. Under such
13 a situation it was not possible to reject a War Ministry
14 request. KAYA was in a position to argue against war at
15 the Cabinet and Liaison Conference meetings should the
16 vital question of war or peace come up. He, therefore,
17 felt it was all right to do as the War Ministry requested.
18

- 19 a. Ex. 3655, #103, T. 36,338, 36,353
20 Ex. 3029, T. 27,060
21 Ex. 3565, T. 34,658-9
22 Ex. 3027, T. 27,020-1
23 Ex. 3331, T. 30,612
24 Ex. 3337, T. 30,650-1
25 Ex. 3660, #57, 100, 108, 114, 116, 117, 120,
122, 128, 130, 169, 172, 174, 177, 181,
183, 188, 195, 200, 202, 205, 207
Ex. 2882, T. 35,750-2
Ex. 2847, T. 25,493

1 As KAYA was very anxious of avoiding war, he
2 took special note to make it plain that the "issuing"
3 or the establishment of "procedure of handling" military
4 currency were not measures taken as the result of a
5 decision for war, nor were they taken because war was
6 desired or anticipated. He made it clear that the
7 measures were taken as a mere general preparation in
8 case of an unexpected eventuality by having a memorandum
9 attached to the drafts. He did so to remove any mis-
10 understanding as to his position and that of the
11 Government.

12 The prosecution in II-26 has contended that the
13 draft measure entitled "the issue of military notes with
14 foreign currency denomination" called for the manufacture
15 of military notes by October 20 and November 20, 1941.
16 The document entitled "the issue of military notes
17 with foreign currency denomination" was decided on
18 October 31, 1941 as can be seen from exhibit 852
19 (Communication No. 9) and exhibit 3025, and it is
20 absurd to contend that a measure decided on October 31
21 called for the manufacture of notes by the 20th of the
22 same month. Again, going over Transcript page 8453
23 cited by the prosecution, we note that the prosecution
24 witness has testified that orders for the manufacture
25 of military currency were based on communications

No. 6 and No. 7 of exhibit 852. However, these two communications were drafted and decided on in September 1941 as can be seen from the dates on them. KAYA was not in office when the two communications were decided on, therefore, while this may be a trifling matter, it stands to reason that KAYA had no connection with the matter charged by the prosecution.

The prosecution, in II-27 and II-28, while admitting that KAYA exerted some effort to avoid war, seems to discount it and to be trying to make it appear as if KAYA had taken a stand to positively propel the nation toward a war. But this is gross distortion of the fact.

1. We now wish to clarify that KAYA was not in a position to play any leading role at the Liaison Conferences. We have taken this opportunity to do so in order that our later explanations may be better understood.

At the said Liaison Conferences various issues centering around the American-Japanese negotiations were most earnestly discussed. His presence at the conferences was not essential or of any primary importance. Neither was he expected to play an important part in the conferences.^a It was because of the fact that,

a.Ex. 3331, T. 30,611

while the major issues of discussion were as mentioned before, he who was purely an expert in financial administration, was a total stranger to the course of events attending the American-Japanese parley and also to various diplomatic affairs. The right to a voice in the discussion of various pending issues of the American-Japanese controversy was virtually held by the Ministries of War, the Navy, Foreign Affairs, and the High Command of both Army and Navy. The drafting of the various instructions wired to the Japanese Ambassador to Washington and of the policies and plans in relation to the conduct of the said negotiations was made upon consultation among War, Navy and Foreign Ministries, and telegraphic messages and other information received from the Japanese Ambassador to America were exchanged between the said three ministries, but never shown to KAYA or to his ministry.^a He was simply informed of such matters at the Liaison Conference or at the Cabinet meeting. The Premier and the ministers of War, the Navy and Foreign Affairs had their own staff respectively at the Liaison Conferences, namely, HOSHINO, MUTO and OKA. Mr. YAMAMOTO, chief of the American Bureau of the Ministry of Foreign Affairs, was always present at the conference.

a. Ex. 2915, T. 25,908; Ex. 3646, T. 35,707;
Ex. 3454, T. 33,101-4; Ex. 3480, T. 33,675;
Ex. 3444, T. 33,016-8.

But KAYA had no such staff.

1 As to the plan of how to further conduct the
2 negotiations with America, it was made after exchange
3 of views among the three ministries of War, Navy and
4 Foreign Affairs and after the views of the High Command
5 were taken into due consideration. The plan so worked
6 out was presented to the Liaison Conference.^a Under
7 such circumstances KAYA was in a very difficult position
8 to have any powerful voice at such conferences, and yet
9 he exerted his best to avoid the war, which fact is
10 shown by his own testimony and by that offered by Mr.
11 YAMAMOTO, Kumaichi, then Chief of the American Bureau
12 of the Ministry of Foreign Affairs, who has testified as
13 witness for KAYA.^b

14 2. Anticipating the possible failure of an
15 amicable settlement of the American-Japanese controversy,
16 KAYA endeavored to find means whereby to prevent a war
17 and to maintain peace between the two countries. This
18 shows how faithful he was to the cause of peace. Since
19 he came to attend the Liaison Conferences, at which he
20 was informed of the course of events and circumstances
21 attending the negotiations in Washington, as well as of
22 the contentions and views of the High Command, it dawned

24 a. Ex. 2915, T. 25,908; Ex. 3646, T. 35,707;
25 Ex. 3454, T. 33,101-4; Ex. 3480, T. 33,675;
 Ex. 3444, T. 33,016-8.
 b. Ex. 3331, T. 30,611

on him that a successful settlement of the controversy
1 was extremely difficult of realization. Therefore, he
2 thought that, while every effort should be made of
3 course to bring the negotiations to a peaceful settle-
4 ment, such measures as would prevent a war even after
5 the failure of the negotiations should be thought over.^a
6 Whereupon, he proposed a settlement of the oil issue.

7 Thus it can be seen that KAYA's effort to avoid
8 the war had a good aim and was positive to say the least,
9 for he was a financial expert, and not a minister in
10 charge of industrial affairs. It is an established
11 custom in Japan that a minister does not and should not
12 meddle with affairs of another ministry, and yet it was
13 KAYA who presented the aforesaid oil problem at the
14 conference.^b The record clearly shows that there was
15 nobody else than KAYA who offered a concrete proposition
16 aimed at the avoidance of war even in the event of the
17 failure of the American-Japanese negotiations.
18

19 3. It was thought in those days that there was
20 no alternative for Japan other than to open hostilities
21 if she should be shut off from all sources of supply of
22 oil. Before the United States enforced the embargo on

23 a. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611;
24 Ex. 2767, T. 24,861-2

25 b. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611-2;
Ex. 2767, T. 24,861-2

oil export to Japan, the late President Roosevelt said
1 to Ambassador NOMURA to the effect that it was in order
2 to maintain peace in the Pacific that we have hitherto
3 refrained from placing an embargo on oil export to Japan,
4 but now we cannot but place such embargo.^a Thus it was
5 hinted that the oil embargo would lead to war. Again,
6 NAGANO, then chief of Naval General Staff, told the
7 Emperor in July 1941 that Japan had no other alternative
8 than to resort to war if she should be shut off from
9 oil supply from abroad.^b Various evidence shows that
10 it was an overwhelming view both in America and Japan
11 that Japan would be driven to war if she should be shut
12 off from oil supply from abroad.^c For Japan had but
13 meager oil resources within her own territory and had
14 no other source of its supply to depend upon for her
15 requirements should she reach a peaceful settlement in
16 her negotiations with the United States. Without oil,
17 her Navy would be a mere scarecrow and she would be
18 placed in a defenseless position. The oil stored in
19 the country was limited while she was threatened with
20 the so-called ABCD encirclement both militarily and
21 economically.
22

23 a. Ex. 2882, T. 25,750-2

24 b. Ex. 1125, T. 10,185

25 c. Ex. 2915, T. 25,923-4; Ex. 3331, T. 30,611-2;
Ex. 3337, T. 30,650; Ex. 3646, T. 35,691;
Ex. 3655, T. 36,319; Ex. 2882, T. 25,750-2;
Ex. 2833-A, T. 25,336-9, T. 25,345, T. 25,349-50

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23 a. Ex. 2882, T. 25,750-2

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 Ex. 3337, T. 30,650; Ex. 3646, T. 35,691;
 Ex. 3655, T. 36,319; Ex. 2882, T. 25,750-2;
 Ex. 2833-A, T. 25,336-9, T. 25,345, T. 25,349-50

Under such circumstances it was generally feared in Japan that the country might at any moment be attacked by the Allied Powers and that there was nothing to safeguard Japan from such danger.^a

KAYA, both at the Liaison Conferences and at the Cabinet meetings, was told of this situation. Now, if Japan could find means to obtain her oil requirements even after the failure of the negotiations then going on between the two countries, and could be assured of its procurement, even to the extent of her minimum needs, the war could be averted, or Japan would find it unnecessary to decide on a war, at least. In other words, if Japan could obtain a continued supply of oil to the extent of her minimum requirements, she could then keep her armament on a working basis by such oil imported together with her oil stored within her territory and would maintain her power of resistance against outside attack, thereby to be assured of her national security to some degree. But, on the contrary, if a continued supply of oil from abroad were not ensured, her stock of oil would soon be exhausted, which would

- a. Ex. 3655, T. 36,338, 36,353;
 Ex. 3029, T. 27,061; Ex. 3565, T. 34,658-9;
 Ex. 3027, T. 27,020-1; Ex. 3331, T. 30,612;
 Ex. 3337, T. 30,650-1;
 Ex. 3660, T. 37,108, 114-116-117-120-122-128-130,
 T. 37,169, 172-174-177-181-183-188-195-200-202-
 T. 57,205-207;
 Ex. 2882, T. 25,570-2; Ex. 2847, T. 25,493.

1 render her defenseless against attack from other countries,
2 an eventuality that would spell the loss of her sense of
3 security. Under such predicament a powerful conclusion
4 loomed up that Japan should settle the issue by means of
5 a war before her stock of oil was exhausted. Therefore,
6 the solution of the oil problem was considered the only
7 effective means to avoid a war. Hence, KAYA made the
8 aforesaid proposition in regard to the oil problem.

9 There is one thing we might add in this connec-
10 tion. The oil problem, that is, the problem of synthetic
11 oil, was one that was to be studied not to wage a war
12 but to avoid it. This fact is clear by referring to
13 evidence^a and various explanations hitherto offered.
14 KAYA's proposition regarding synthetic oil was seriously
15 taken up and studied, but for technical reasons and for
16 lack of sufficient materials it was found and concluded
17 that no sufficient quantities of it could be obtained
18 in time to meet her needs.^b

19
20
21
22 a. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611-2;
Ex. 2767, T. 24,861-2.

23 b. Ex. 3655, T. 36,319; Ex. 3605, T. 35,217;
24 Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,650;
25 Ex. 2767, T. 24,861-2.

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1 It is shown in witness OKADA's testimony
2 that KAYA urged a re-study of the said oil problem
3 by the War Ministry after the latter completed its
4 initial study.^a It will be appreciated that KAYA
5 who was a Finance Minister could not possibly do
6 better than what he did.

7 Again, when at the Liaison Conference on
8 November 1, 1941, a plan for the commencement of
9 military preparations for war in the event of the
10 failure of the American-Japanese parley in spite of
11 this Third Plan, KAYA proposed the importation of oil
12 from North Karafuto and, if necessary, the purchase
13 of North Karafuto as the last recourse for Japan to
14 take for the solution of the critical problem of oil.
15 But this proposition was shelved as one impossible of
16 realization in view of the international situation
17 then prevailing.^b But the fact remains that KAYA did
18 all he could to avoid the war.

19 It is an injustice to undervalue KAYA's
20 effort in that direction when the war-mindedness of
21 the powerful High Command was so strong.^c

22 N-9-28. The Liaison Conference of November 1,
23 1941, began in the morning and lasted until two o'clock
24

25 (a. Ex. 2767, Tr. 24,861-2.
b. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,650
c. Ex. 3646, T. 35,619)

1 of the following morning. At this conference, the
2 Supreme Command was of the opinion that the United
3 States had no intention of coming to an agreement and
4 made a proposal to decide at once on the waging of war.
5 KAYA and the other members of the Cabinet opposed this
6 proposal.^a

7 The Foreign Minister then brought forward
8 two proposals, the "A" and "B" plans which showed
9 great concessions.^b

10 The Supreme Command insisted that: "If by
11 the end of November the negotiations did not show a
12 possibility of a settlement, we should be ready to
13 decide on war and with that in mind there is need of
14 commencing preparations now." "Japan faces a crisis,"
15 stated the Supreme Command in support of its proposal,
16 "due to the military and economic pressures by the
17 Allied Powers. If the negotiations remain unsettled
18 and we drift along as we are, the defensive power of
19 Japan in the Western Pacific in comparison with that
20 of the Allied Powers will day by day decline. We will
21 reach a critical point if we go along as we are until
22 after December. If we are then attacked or there

23 (a. Ex. 3337, T. 30,651; Ex. 3655, T. 36,317
24 36,322.

25 (b Ex. 3655, T. 36327; Ex. 3331, T. 30,611-2;
Ex. 3337, T. 30,651-2)

arises a necessity of waging a war in self-defense
1 Japan will be so weak by then that the Supreme Command
2 will not be able to accept the responsibility of
3 national defense. We must make up our minds to decide
4 on war before the opportune moment is lost and with
5 that in mind we should decide on a preparation for
6 war."

7 The Supreme Command further stated:

8 ". . . . However, as it goes without saying
9 that we should continue our best efforts for the
10 success of the negotiation, if we become assured of
11 its success, the operations preparations should be
12 stopped as a matter of course."

13 Such was the purport of the Supreme Command's
14 statement. This is the same Third Plan referred to
15 by TOJO in his affidavit.^c
16

17 The Supreme Command's proposal was not a
18 proposal to wage a war, but it greatly increased the
19 possibility of war and to KAYA it was a very grave
20 problem.

21 KAYA wanted to prevent Japan from starting
22 a war even if the negotiations failed. To do this,
23 he realized the only solution was a source of oil.
24

25 (a. Ex. 3337, T. 30,651-2
b. Ex. 3331, T. 30,613
c. Ex. 3655, T. 36,317, 36323)

1 As a counter measure to the Supreme Command's pro-
2 posal, KAYA suggested a plan to import oil from
3 Karafuto. If necessary purchase the island of Kara-
4 futo to make this source of oil a certainty. KAYA's
5 suggestion was a measure of last resort and while no
6 one opposed it, it was not adopted as the current
7 relationship between Japan and Soviet Russia made the
8 immediate realization of such a proposal out of the
9 question.

10 KAYA's proposal showed his sincere desire
11 to avoid war at all cost. He pointed out the danger
12 of war, that even if the war was for self-defense
13 the outcome would be uncertain if it became a long
14 protracted war and the result of defeat after a long
15 protracted war would be far more miserable than if war
16 were averted. All the members except KAYA and TOGO,
17 however, agreed to the Supreme Command's proposal.^a

18 From the point of view of a humanitarian,
19 KAYA sincerely desired to avoid war for he realized
20 both his people and the enemy would suffer the con-
21 sequence of war. As a patriot who loved his country
22 and people, he dreaded to see his country plunged into
23 a dangerous and uncertain war.^b

- 24 (a. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,654;
25 T. 36,062.
b. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,653)

1 However, if settlement was not reached there
2 was no way of safeguarding the very existence of Japan
3 as a nation as KAYA's oil plans were not adopted.
4 Obviously, Japan's fighting power would diminish with
5 time and the Supreme Command was of the opinion that if
6 the days dragged on as things were it could not bear
7 the responsibility of national defense. The situation
8 was such that KAYA, as a civilian member of the con-
9 ference could not openly oppose the Supreme Command's
10 proposal. He felt, however, to give assent would be
11 inviting grave dangers. The conference dragged on un-
12 til the following morning. KAYA wanted to find a
13 solution somehow. He, together with TOGO insisted
14 the matter should be given further serious consider-
15 ation. The Supreme Command insisted on an immediate
16 decision, but due to the strong insistence on the part
17 of KAYA and TOGO, these two were granted another day
18 to consider the matter. This fact KAYA mentioned in
19 his own testimony and confirmed by the testimony of
20 YAMAMOTO, Kumaichi, the KIDO Diary of November 2,
21 1941, and the testimony of TOGO and TOJO.^a

22 Discussion at the Liaison Conference of
23 November 1, 1941, dragged on until the following morning.

24 (a. Ex. 3337, T. 30,650-4; Ex. 3331, T. 30,611-2;
25 Ex. 3332, T. 30,617; Ex. 3655, T. 36,324;
 Ex. 3646, T. 35,695; Ex. 3333, T. 30,618)

1 In view of the prevailing situation, it was no small
2 matter for KAYA to request for more time to think the
3 matter over, after the discussion having lasted all
4 day and night, and since the Army and Navy were
5 strongly determined to immediately begin preparations
6 for operations. (The preparations were not to inter-
7 fere with the negotiations. The preparations were to
8 be ready in case the negotiations failed.)

9 Evidence adduced shows that the final oper-
10 ations plans of the Combined Fleet were made by
11 November 1 of the same year;^a that the Army and
12 Navy councillors had a joint meeting on November 4:^b
13 that the proposal of November 1st Liaison Conference
14 was decided on at the Imperial Conference of November
15 5;^c that on the same day operations command was issued
16 to the Combined Fleet;^d that on November 6 command for
17 preparation of operations was issued to the Commander-
18 in-Chief of the Southern Areas Army General TERAUCHI:^e
19 and on November 8 operations agreement was reached
20 between the Army and Navy.^f

21 KAYA at that time knew nothing about the
22 aforementioned operation commands, but they show how
23

24 (a. Ex. 809

b. Ex. 3655, T. 36,329

c. Ex. 3655, T. 36,335

25 d. Ex. 809

e. Ex. 3027, T. 27,032

f. Ex. 3027, T. 27,032)

1 urgent the state of condition was and we can imagine
2 what strong attitude the Army and Navy Supreme Com-
3 mands took on the question of immediate decision on
4 the Third Proposal. The attitude of General SUGIYAMA
5 on the proposal mentioned in the testimony of witness
6 YAMAMOTO could not have been otherwise, looking back
7 at the situation at that time and it is clear that
8 the testimonies of witness YAMAMOTO and of KAYA were
9 not exaggerations and in fact were modest.^a The fact
10 that he reserved his reply for a day cannot be looked
11 at lightly.

12 The prosecution has stated that KAYA was
13 a silent participant at most of the meetings. This
14 was only natural, for as already explained he did not
15 play a major part at the meetings. In spite of his
16 minor role at the meetings, he did stand up strongly
17 against war. The reason the Liaison Conference of
18 November 1, 1941 dragged on until the following morning
19 was that he and TOGO refused to accede to the Third
20 Proposal and it goes without saying that KAYA expressed
21 himself amply at this meeting. The prosecution's
22 charge that he supported the military is without founda-
23 tion. The Imperial Conference was a mere formality and
24 it is only natural that KAYA did not say anything at
25 (a. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,654)

these meetings.

1 N-9-29. KAYA has testified that after return-
2 ing home from the Liaison Conference of November 1,
3 he considered the Supreme Command's proposal from all
4 angles, that it was already past the stage as to
5 whether the proposal was good or bad, that he believed
6 it was impossible to stop the proposal. I shall ex-
7 plain the situation.

8 After thinking over the matter, KAYA was con-
9 vinced that while the question that the proposal was
10 good or bad was important, no matter what the reason,
11 if possible the Supreme Command's proposal must be
12 stopped, but concluded that as a practical problem
13 it was impossible to do so. He based his conclusion
14 on the following reasons:

15 1. At the Liaison Conference all except
16 KAYA and TOGO had assented to the Supreme Command's
17 proposal.

18 2. The Supreme Command had insisted that
19 the decision must be made at once and agreed to give
20 KAYA and TOGO just one day to consider the matter and
21 that only after a heated argument.

22 3. For the Supreme Command to make such an
23 important proposal gave rise to the supposition that
24 the Army and Navy were united in their opinions. It
25

1 gave rise to the supposition that radical young
2 officers' groups were decided on going ahead with
3 preparations for operation for the military leaders
4 would not have made such a grave proposal without
5 the backing and urging of the radical young officers'
6 groups. These young officers' groups actually had con-
7 trol of the military. It was not difficult to suppose
8 that the military leaders were having a difficult time
9 suppressing the radical young officers' groups in
10 their demand for immediate disruption of the Japanese-
11 American negotiations.

12 4. The Navy was in complete accord on the
13 proposal. This was very important. Up to that time,
14 it was felt that the Navy was not in favor of war^a and
15 this gave rise to the hope that the decision for war
16 might yet be averted. It was due to this reason that
17 the Imperial Conference decision of September 6 was
18 revoked for a new start. However, on this proposal it
19 was evident that the Navy was in accord with the Army.
20 This was extremely important in making the situation
21 decisive.

22 For reasons stated KAYA felt it was impossible
23
24 (a. Ex. 3470, T. 33,342-3; Ex. 3473, T. 33,388;
25 T. 33,392-3, T. 33,394-5, T. 33,399;
Ex. 3454, T. 33,104-5; Ex. 3467, T. 33,299-
33,320; Ex. 3605, T. 35,205-6; Ex. 3340,
T. 30,963-4)

1 to alter the determination of the militarists. The
2 state of condition in Japan at the time was such that
3 the Army alone could have forced the hand of the Govern-
4 ment. With the Army and Navy united, it was clear that
5 the Government had no power of resisting. If KAYA had
6 opposed, what paths would have been open to him?

7 He might have campaigned his disapproval
8 within the Government, or he might have conspired with
9 the Senior Statesmen in opposition measures. KAYA,
10 however, did not have a political backing^a to carry
11 out an effective campaign and manoeuvring was not
12 his forte. Needless to say, it was impossible for him
13 to stir up public opinion against the proposal in a
14 society in which the military was all-mighty.

15 What would have been the result if he had
16 openly opposed within the Government? He probably
17 would have been asked to resign, and if he had consented,
18 someone having the militarists' point of view would have
19 been appointed to succeed him. If he had refused to
20 resign the Cabinet would have been forced to resign en
21 bloc and the militarists and the ultra-nationalists
22 would have crucified him as a pro-American who caused
23 the nation's defense to fall into danger. Strong
24 criticism against the pro-American elements would have
25 (a. Ex. 3322, T. 30,557; Ex. 3325, T. 30,586;
Ex. 3320, T. 30,606)

swept the country and the power of the radical groups would have become only the more stronger. In such a situation the command to form a new cabinet would most probably have gone to someone in the military and in the formation of the new cabinet the question of reviewing the Japanese-American situation, as was the condition when the TOJO Cabinet was formed on October 17, 1941, would probably not have come up. This is clear for the militarists would no doubt have insisted that there was no need of going into it again for the TOJO Cabinet had already studied the problem fully. It will be remembered that the TOJO Cabinet was formed with the condition that the Imperial Conference decision of September 6 be revoked and the Japanese-American problems be studied anew. The Navy was in complete accord with the Army this time.

If anyone in favor of absolute peace had been given the command to form the new cabinet, or if the re-study of the Japanese-American problems had been made a condition to the forming of the new cabinet, the militarists, the radicals and rightest groups would have staged a coup d'etat. The prevailing situation made such a presumption highly possible.

The Senior Statesmen would have guessed that the situation just mentioned would have become a fact

(a. Ex. 3655, T. 36,312; Ex. 3646, T. 35,707-8;
Ex. 3628, T. 35,543; Ex. 3708, T. 36,944)

1 and even if they had privately agreed to any anti-
2 militarist plan of TOGO or KAYA they would have known
3 it was impossible to take any measures against the
4 militarists under the prevailing situation. It was
5 clear the new cabinet would have adopted from the start
6 a rather pro-war attitude.

7 Under such a situation the Supreme Command's
8 proposal before the November 1 Liaison Conference
9 would have been immediately approved. Those who were
10 not militaristically inclined like KAYA would become
11 the target of severe criticism for having caused the
12 loss of valuable time necessary for operations prepar-
13 ation by bringing about a political upheaval. He would
14 have been ousted from the Cabinet. The moderates would
15 have lost whatever little power they possessed and the
16 pro-militarist sentiment would have spread throughout
17 the country like wild fire. It was clear that in such
18 a situation the possibility of an amicable settlement
19 of the Japanese-American problems would have become
20 extremely weak and the possibility of war would have
21 been aggravated.

22 For reasons mentioned it was clear that it
23 was impossible for KAYA or any other civilian official
24 to stop the Supreme Command's proposal. It was im-
25 possible for a civilian official to stop any measure

backed by the entire Army and Navy.

1 The greater majority of the so-called Senior
2 Statesmen seemed to be in favor of peace, but they
3 would not have taken any positive step in opposition
4 to the militarists for they did not have sufficient
5 power to push their opposition and they were afraid
6 the counter-measures the militarists would have taken
7 would not only have endangered their personal safety,
8 but would have plunged the whole nation into danger.
9 At the Senior Statesmen's Conference of November 29,
10 1941, no one openly voiced opposition to war.

12 For reasons stated KAYA, as a member of the
13 Cabinet, gave up the idea of opposing the Third Plan.

14 In spite of his opposition KAYA did not re-
15 sign his post for he believed his resignation would
16 only aggravate the tense situation.^a

17 1. His successor would be named immediately,
18 but it would take a day or two before his successor
19 would be ready to assume his duties and this would
20 lead to stiff criticism by the military that the change
21 cost the loss of valuable time necessary for prepar-
22 ation for operations at such critical time.
23

24
25 (A. Ex. 3337, T. 30,655)

2. Even if the reason for his resignation was not made public, it would be generally known that the reason was in connection with the Japanese-American problem. He would be charged as having caused a breach at a time when national unity was highly essential and would be the target for severe criticism by the pro-war factions.

3. He would have been regarded as a spineless pro-American.

The above reasons would stir up the pro-war factions. His personal safety would be endangered. This he did not mind if the result would be to the good of the country and people, but it was clear his resignation would not ease the situation. It was clear the situation would only become worse. The rightist groups and the young military officers were radical and impulsive and had the tendency to vehemently fight back opposition and would have made the attack on KAYA an issue in stirring up public opinion for war. Such was the situation and his resignation would have been fuel to the anti-American sentiment of the pro-war groups.

If the United States had agreed to even a part of the "A" or "B" plans discussed at the November 1st Liaison Conference, Japan would have made

1 further concessions and a compromise might have been
2 possible. (a) However, if the anti-American sentiment
3 grew in intensity, it would have been difficult to make
4 further concessions. Thus the resignation of KAYA
5 would have only lessened the possibility of the
6 Japanese-American negotiations from reaching a settle-
7 ment.

8 If KAYA had resigned his successor would not
9 have been a moderate, peace-loving man like KAYA. It
10 was clear that a man who was in complete accord with
11 the military would have been selected.

12 From the standpoint of national finance, such
13 a prospect worried KAYA deeply. To KAYA, it was a
14 bitter experience when after the February 26th Inci-
15 dent, Finance Minister BABA readily acquiesced to the
16 demands of the military for increased budgets for
17 this caused much uneasiness among the financial and
18 economic circles. KAYA, as Vice Minister and Minister
19 of Finance, had a difficult time overcoming the ill
20 effects caused by the BABA policy. (b)

21 The resignation of KAYA or TOGO would have
22 caused repercussions abroad for news to the effect
23 that their resignations were due to disagreement on
24 major issues of the Japanese-American negotiations was
25

(a) Ex. 3337, T. 30,651, 30,655-6.

(b) Ex. 3322, T. 30,558; Ex. 3324, T. 30,579-80.

1 sure to leak out. At a time when the government was
2 facing an urgent and important diplomatic problem, a
3 discord within the cabinet was bound to have ill ef-
4 fect internationally, especially when it was believed
5 there still was a possibility of reaching an agreement
6 based on the Japanese proposals. Such a breach in the
7 cabinet would have only hampered the negotiations,
8 prolonged settlement and invited further dangers.

9 Having the welfare of the country and people
10 at heart, KAYA decided not to resign. He still had
11 hope and decided to make use of the position in an
12 endeavor to avert war. He believed he could contribute
13 more toward peace as a member of the cabinet.

14 What efforts he exerted for the cause of peace
15 can be seen from the demand he put to the Supreme
16 Command after the receipt of the Hull Note that even
17 after preparations for war operations were made and
18 even after hostilities have commenced, all plans for
19 operations be dropped immediately upon receipt of signs
20 that the negotiations might reach a settlement. To
21 this demand, the Supreme Command agreed.^(a)

22 Such was the reason why KAYA decided to remain
23 at his post and finally assented to the Supreme Com-
24 mand's proposal of November 1st. His decision to
25

(a) Ex. 3337, T. 30,656-7; Ex. 3007, T. 26,726-9;
Ex. 3010, T. 26,767-8; Ex. 3444, T. 33,019-20;
Ex. 3027, T. 27,033-4

1 remain in the cabinet did not mean he changed his views
2 on the problem of war. On the contrary, he felt that
3 if he resigned, the effect, both at home and abroad,
4 would be unfavorable towards the settlement of the
5 Japanese-American negotiations and thus aggravate the
6 possibility of a war between the United States and
7 Japan.
8 N-9-29-A.

9 Because of the state of condition already
10 explained, KAYA was not able to oppose the Supreme
11 Command's proposal to commence preparations for opera-
12 tions although he was against it. He hoped that somehow
13 the Japanese-American negotiations would reach a settle-
14 ment. His mind was constantly on the negotiations and
15 he was happy when the news was good and worried when
16 the news was bad.

17 At the Cabinet and Liaison Conference meetings,
18 KAYA had endeavored at every opportunity to soften
19 Japan's attitude.

20 In the meantime, the Hull Note of November 26
21 was received. KAYA had been informed of the strong
22 United States attitude, but the situation eased some-
23 what around the 20th of November and KAYA was hopeful
24 that the negotiations might turn to the better. The
25 arrival of the Hull Note put an end to this hope. When

report concerning the Hull Note was made Japan lost
 1 hope for a settlement. It was reported that the
 2 United States had rejected Japan's proposals which the
 3 United States had previously given indications as being
 4 (a) acceptable.

5 They were told that if she accepted the Hull
 6 Note it was certain Japan would lose, directly or indi-
 7 rectly, her international position, that her very
 8 existence would be endangered. This was the opinion
 9 of the Supreme Command and of the Cabinet members. On
 10 top of this, the Prime Minister and the Foreign Minis-
 11 ter reported that the Hull Note was a virtual ultimatum
 12 and that the United States had no intention of compro-
 13 mising. They were also told that behind this firm atti-
 14 tude of the United States was a well-prepared fighting
 15 (b) force.

17 KAYA was not in possession of sufficient
 18 knowledge to oppose the above-mentioned views. Those
 19 who sincerely hoped for a settlement of the negotia-
 20 tions and for continuance of peace believed that if
 21 the United States had accepted even a part of the "A"
 22 or "B" proposal, Japan, too, would have made concession

- 23 (a) Ex. 3646, T. 35,706; Ex. 3655, T. 36,355
 24 (b) Ex. 3655, T. 36,358; Ex. 3646, T. 35,706;
 25 Ex. 3565, T. 34,665; T. 36,108, 36,135-7;
 Ex. 2954, T. 26,072-3; Ex. 2955, T. 26,089,
 T. 26,093

1 in an effort to reach a settlement. This last hope
2 (a)
3 was now gone.

4 It might be said that we are contradicting
5 ourselves for were not the "A" and "B" proposals the
6 final Japanese proposals? Not necessarily. They were
7 not final proposals for those who desired sincerely
8 to attain an amicable settlement. In the discussion
9 for a plan for diplomatic negotiation within the govern-
10 ment, the following situation is probable:

11 There would be a group which would advocate
12 further concessions in order to reach an agreement
13 and a different group which would advocate no conces-
14 sion and bring the negotiations to a close. In the
15 pursuing discussions, a middle ground would most prob-
16 ably be taken signifying the maximum concession and a
17 minimum demand. Otherwise there would be no agreement
18 within the government. The agreement reached within
19 the government would be considered by the government
20 as the final plan and would be handled as such. For-
21 eign Minister TOGO, no doubt, proceeded with the nego-
22 tiations on that basis. However, after negotiating, if
23 there was a sign of reaching an agreement by making some
24 concessions, it would be re-studied by the government.
25 If the advocates of a firm stand persisted on their
stand, the discussion would come to naught, however,

(a) Ex. 3337, T. 30,655

1 there is the possibility of agreeing to just one more
2 concession. To have such a possibility in mind was,
3 at the time, only natural for those who sincerely be-
4 lieved in averting war. This hope, KAYA explained in
5 his affidavit and was not contradicted.

6 Under the situation there was nothing left
7 but to choose one of the following:

- 8 1. War, or
- 9 2. Continue with the status quo.

10 To follow the second course meant Japan's
11 power of national defense would become weaker each
12 day and the Supreme Command's statement that it could
13 not shoulder the responsibility of national defense
14 under the circumstances could be understood. In con-
15 nection with this we have already related how, without
16 success, KAYA tried to find a solution that would
17 enable the country to go on without going to war. It
18 was thought that when the Hull Note was made public,
19 the militarists, the rightists and the people in gen-
20 eral would be greatly agitated and would advocate im-
21 mediate war. In such a situation a small minority
22 group might try to stave off the frenzy for war, but
23 it was easy to predict that such a minority would be
24 helpless against the war fever. Any attempt to avert
25 war would have been like pouring oil on a fire.

1 The Cabinet and the Liaison Conference held
2 their meetings. War was, in fact, decided at these
3 meetings. At the Senior Statesmen's Conference held
4 on November 29th, no one came out openly against war.

5 We have shown that KAYA did not want war,
6 nor was he indifferent to war. He exerted his every
7 effort to avert war.

8 THE PRESIDENT: We will adjourn until half
9 past one.

10 (Whereupon, at 1200, a recess was
11 taken.)
12
13
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25

AFTERNOON SESSION

1
2 The Tribunal met, pursuant to recess,
3 at 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now resumed.
6

7 MR. LEVIN: Mr. President, and Members of the
8 Tribunal, I continue reading in the middle of page 145,
9 at N-9-30.

10 It is true that KAYA attended the Senior
11 Statesmen's Conference held on November 29, 1941, but
12 there was no decision made at this conference. KAYA,
13 was not one of the Senior Statesmen. Never was he a
14 party to any decision even if made, nor did he say any-
15 thing at the conferences. This was acknowledged by the
16 prosecution. (a)

17 The prosecution stated that KAYA had attended
18 the Imperial Conference held on December 1, 1941, and
19 that he had reported about the financial and economic
20 power of Japan at this conference. But the allegation
21 that he reported on Japan's economic strength is not
22 true. There is no evidence in support of that allega-
23 tion. TOJO has testified that KAYA made merely a
24 financial report. (b) Such economic problems as concerned
25

(a) T. 36,364-7, Pros. Sum. II-29.

(b) Ex. 3655, T. 36,374.

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(b) Ex. 3655, T. 36,374.

1 industrial production, transportation and goods and
2 resources are matters outside the scope of authority
3 of the Finance Minister. They are matters with which
4 the Minister of Commerce and Industry, the Minister
5 of Agriculture, the Minister of Communications, the
6 Railway Minister and the President of the Planning
7 Board were concerned, and all these ministers were
8 present at the said Imperial Conference. It was out (a)
9 of the question for KAYA to report on such matters.

10 The prosecution stated that KAYA had told
11 the Prime Minister previously that he would not oppose
12 a war. The Liaison Conferences and the cabinet meet-
13 ings held during the period of November 27, 1941, to
14 December 1, 1941, took place after receipt of the Hull
15 Note. The formal decision at such conferences was
16 left over to the Imperial Conference on December 1,
17 but as a matter of fact all members at the conference
18 acknowledged that war could not be avoided. (b)

19 We mean to say that he was merely one of those
20 present at the conference.

21 It is true he attended various conferences,
22 but as reiterated before, he always endeavored to
23 avoid war. He was finally compelled to agree to the
24

25 (a) Ex. 3655, T. 36,372.

(b) Ex. 3655, #106, 108, T. 36,359, 36,360.

1 opening of hostilities, but he did so believing that
2 Japan could not avert the war for the sake of her
3 existence as a nation. Never was it his intentions
4 to support an aggressive war, nor a war in contraven-
5 tion of international treaties. Nor did he take part
6 in the deliberations to make preparations for such.
7 This will be elucidated at length in another part of
8 this summation.

9 It follows therefore that his attendance at
10 the said Liaison Conferences, the cabinet meetings
11 and the Imperial Conference did not in any way consti-
12 tute his alleged conspiracy.

13 To go to war or not to go to war meant whether
14 or not to fight a defensive war.

15 N-9-31.

16 I have already mentioned about the pains and
17 efforts KAYA went to in an attempt to avoid war, that
18 he was against war but assented to war because he
19 sincerely believed the war inevitable in self-defense. (a)
20 On this point KAYA was not cross-examined, nor was its
21 probative value contested.
22

23 If KAYA sincerely believed the war was in
24 self-defense, the question rises as to why he tried so
25 hard to avoid war. I believe I have already made this
(a) Ex. 3337, T. 30,657.

1 clear, but as this is a most important point I shall
2 try to explain briefly why he hesitated in giving his
3 assent.

4 1. It was only natural for a man of KAYA's
5 character to want to avert war. (a) KAYA sincerely
6 believed war brought misery and suffering to the victor
7 as well as to the loser and even to parties not directly
8 concerned. He saw before him the hardships placed
9 upon the people on account of the China Incident. He
10 did not wish to burden the people further.

11 2. KAYA was a financial administrator. War
12 places the finance of a nation in extreme difficulties
13 which continue on until after war. This is true even
14 with the victor nation. In time of war, compared to
15 the men in the fighting forces, a financial administra-
16 tor's work is back-stage work without due recognition.
17 An honest and serious man like KAYA could not desire
18 war from his own standpoint, nor from the standpoint
19 of the nation.

20 3. It was not difficult to foresee that a
21 war against the United States would be extremely
22 dangerous for there were ample reasons to believe the
23 war might be long and protracted. There was no com-
24 parison in the production powers of the two countries
25 (a) Ex. 3337, T. 30,653; Ex. 3331, T. 30,612.

1 and in a long war, the power of production is a deciding
2 factor. Even the headstrong Supreme Command had stated
3 there was no confidence of a sure victory if the war
4 dragged on for over two years. (a) Even if the war was
5 in self-defense, if defeated, the results would be
6 far worse than not going to war at all.

7 Of the three reasons mentioned, KAYA was
8 conscious of the first reason from the very first; of
9 the second reason, even before he became Finance
10 Minister; and the third, as a matter of common sense
11 before he joined the TOJO Cabinet, before he listened
12 to the arguments of the Supreme Command.

13 For some time after joining the TOJO Cabinet KAYA
14 was not certain, if a Japanese-American war should break
15 out, whether or not the war was necessary from the
16 standpoint of national defense at that time. KAYA's
17 great fear was that the radical elements in the mili-
18 tary and other outside groups would plunge the nation
19 into war, even were it possible to avoid war. However,
20 after lapse of some days, he could not help but come
21 face to face with the problem of whether or not to go
22 to war for self-defense.

23 KAYA eventually assented to the Third Plan of the
24 Liaison Conference of November 1, 1941. The Third Plan,
25 (a) Ex. 3337, T. 30,654, Ex. 3331, T. 30,612.

1 however, was not a decision for war. It was a decision
2 to commence preparations for operations. That immediate
3 commencement of preparations was necessary for the
4 defense of the nation was the strong contention of the
5 Supreme Command. This is clear from the testimony of
6 KAYA and YAMAMOTO, Kumaichi. ^(a) The Supreme Command was
7 firm in its insistence, but there was not the slightest
8 hint of a war of aggression in the reasons advanced
9 by the Supreme Command as to why immediate commence-
10 ment of preparations was necessary. KAYA did not
11 believe the firm attitude of the Supreme Command
12 meant aggression.

13 Even after it became clear that the impending
14 war was in self-defense, KAYA endeavored to avert it
15 for war, itself, was a calamity and a grave danger to
16 Japan. It is a gross error to conclude that just
17 because he tried to avert it, it was for aggression.
18 Even if he had considered that war was wrong it is
19 clear that he did not think of the war as a war of
20 aggression.

21 We shall explain positively the reasons why
22 KAYA believed the war was to be a defensive war. At
23 the cabinet meetings and Liaison Conferences he was
24 told of the following:

25 (a) Ex. 3337, T. 30,651; Ex. 3331, T. 30,612.

1 1. The Supreme Command was of the opinion
2 that if the state of conditions dragged on until after
3 December without the negotiations reaching a settlement,
4 Japan's power of defending herself in the Western
5 Pacific would become so weak in comparison with that
6 of the ABCD powers that she would not be able to
7 defend herself. To support this assertion, the Supreme
8 Command pointed out the scale and rate of military
9 preparations of the United States, which Japan can
10 nowhere come near; that the ABCD encirclement in pre-
11 paration for war against Japan was getting tighter each
12 day; that without oil from the United States or the
13 Dutch East Indies there would come a time when Japan
14 would not be able to move her battleships or fly her
15 aircraft.

16 2. Japan lost hope of reaching a settlement
17 after receipt of the Hull Note for if the demands of
18 the United States were accepted, it was clear Japan's
19 very existence would be jeopardized. ^(a) She would lose
20 her legitimate rights and might even result in the loss
21 of Korea. Such was the explanation of the leaders of
22 the cabinet and the Supreme Command.

23 3. TOGO and TOJO explained that the Hull
24 Note was a virtual ultimatum.

25 (a) T. 36,108, 36,135-7; Ex. 3655, #104, T. 36,355.

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1 4. As already stated, to go on without
2 reaching a settlement would have caused Japan to lose
3 her power and there would have been no way out for
4 Japan except to subjugate herself to the demands of
5 the other countries. It was believed that the results
6 would be far worse than what would have followed if
7 the Hull Note was accepted.

8 5. Furthermore, the prevailing situation was
9 such that the military was of the opinion that there
10 was no telling when the Allied Nations might commence
11 an attack, ^(a) and there was no good reason to deny this
12 fear, nor any good reason to deny the opinion that
13 Japan would not be able to ward off an attack if the
14 commencement of war was delayed.

15 KAYA at the time did not have any good reason
16 to go against the explanation.

17 For reasons stated, it is clear that it was
18 only natural for KAYA to have arrived at the conclusion
19 that it was inevitable that Japan must go to war for
20 self-defense. And it is not difficult to see that a
21 man of KAYA's humanitarian outlook who dreaded the
22 dangers that a defeat would bring on the nation and
23 for that reason even endeavored to avert a defensive
24 war, could not have thought that the war was for
25

(a) Ex. 3655, T. 36,358; Ex. 2847, T. 25,493;
Ex. 3027, T. 27,020-1.

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(a) Ex. 3655, T. 36,358; Ex. 2847, T. 25,493;
Ex. 3027, T. 27,020-1.

aggression.

1 The explanation of Prime Minister TOJO at
2 the Imperial Conference of December 1, 1941, was clear
3 on the point that Japan was forced to go to war
4 because her very existence was threatened. (a) TOGO
5 made similar explanation at that conference. (b)

6 Even the Kellogg-Briand Treaty recognizes
7 the right of each nation to decide what is defensive.
8 The prosecution and the Tribunal recognize this. The
9 question is whether or not the defendant sincerely and
10 without fault believed the war was in self-defense.
11 KAYA sincerely without fault believed so.

12 At this time we wish to point out the follow-
13 ing:
14

15 We do not deny that KAYA knew before the
16 Pacific War broke out in the southern areas that the
17 southern Pacific would become the battlefields. But
18 it cannot be concluded from this that KAYA thought the
19 war was a war of aggression. It has been said that
20 the front line of United States' defense was the banks
21 of the Rhine River. The Supreme Command of Japan
22 recognized that speedy occupation of the southern areas
23 was necessary for the defense of Japan. (c) It is a
24

- 25 (a) Ex. 2954, T. 26,072-3.
(b) Ex. 2955, T. 26,089-93.
(c) Ex. 3007, T. 26,715.

1 matter of natural conjecture that such an explanation
2 was made to KAYA at the conference meetings. It was
3 common sense that even in a defensive war that battles
4 might take place outside of the homeland.

5 We do not deny that at the time there were in
6 Japan many who believed in a firm stand, many who were
7 for war; that the motive of these people for wanting
8 war might have been other than that of defense, but
9 no one at the cabinet meetings or the Liaison Con-
10 ferences ever suggested any other reason for going to
11 war than that in self-defense. There is no evidence
12 to the contrary.

13 N-9-31-A.

14 What the prosecution contends in II-31 shows
15 the prosecution has misconstrued KAYA's defense.

16 In the first place, the prosecution has con-
17 cluded that KAYA joined the conspiracy. That KAYA was
18 not party to any conspiracy we have already mentioned.

19 KAYA has testified that after the Liaison
20 Conference of November 1, 1941, and again at the time
21 when the decision for waging war was reached, he had
22 considered resigning from the cabinet, but he did
23 not resign. Perhaps it was because of this the prose-
24 cution contends that he did not free himself from
25 the conspiracy. But the contention of the prosecution

1 is in error. If KAYA had considered resigning because
2 he felt the decision was for a war of aggression and
3 had not resigned, then it might be said he did not
4 divorce himself from the conspiracy. But it was not
5 so. KAYA sincerely believed the war was in self-
6 defense. However, he thought of what defeat would
7 mean to the country, that even if the war was in self-
8 defense, if Japan lost the war, she would be in far
9 worse situation than if she did not go to war at all,
10 even if the war was in self-defense. ^(a) He thought of
11 the responsibility as a minister to participate in
12 the decision for such a dangerous war and considered
13 whether it was not better for him to resign. After
14 much consideration he came to the conclusion that to
15 resign would bring bad effects to the country. There-
16 fore, he decided not to resign. We have already
17 related in detail as to why he did not resign on
18 November 2 and we shall now relate why he did not resign
19 on December 1, at the time the decision for war was
20 made.

21 He gave the matter his deepest consideration.
22 Why he decided to stay with the cabinet is expressed
23 ^(b) in his affidavit:
24

25 (a) Ex. 3337, T. 30,654.

(b) Ex. 3337, T. 30,654; T. 36,996-7.

"Japan was embarking on a perilous war, whether good or bad. If the Finance Minister had resigned on the ground that he was against war, there would arise the possibility of adding greater difficulties to the already difficult situation. The public would have interpreted the resignation to mean that financially and economically Japan was not in a position to fight the war successfully, that the Finance Minister resigned because he felt the burden too great for the nation to bear. When it comes to national finance, the feeling of the people is especially important. If the people are made to lose confidence it will breed a feeling of uncertainty and thus become a cause for defeat. I was against the war, but I could not think of increasing the dangers that Japan faced. I felt it my duty to carry out my responsibility."

If the people lost faith in the value of the currency they would start buying up goods in a mad rush. This would make prices go up and thus aggravate inflation. In a country, in time of war, the amount of currency increases and commodities become scarce. This phenomenon is especially noticeable in a country with weak production power like Japan. In countries weak in production power, loss of faith during wartime

1 in the country's currency value would bring about a
2 serious inflation that would cause the financial and
3 economic system and order of the country to break down
4 and thus become a basis for defeat. It is natural for
5 the people of the country to lose confidence in their
6 currency value once they begin to feel that the war
7 was too much for them or that finance and economy of
8 the country could not withstand the war.

9 As Finance Minister, KAYA could not think
10 of permitting his own action to contribute toward
11 anticipated dangers.

12 Under such a situation he could not resign.
13 It is clear he did not continue to remain in office
14 because his self-interest dictated. As a patriot who
15 loved his country there remained no choice but to drink
16 back the tears and continue in his position.

17 In II-31, the prosecution has contended that
18 KAYA first of all aided the military. Evidence, how-
19 ever, shows that KAYA constantly endeavored to suppress
20 the military from pushing the country into danger.
21 It is a fact that KAYA was a member of the cabinet in
22 which the military had decisive power and because
23 he did not criticize the military outside of the cabinet
24 it cannot be said that he aided the military.

25 Conditions in Japan at that time were such

1 that there could not have been a cabinet without a
2 strong military influence. Entering such a cabinet,
3 the best possible thing he could do was to endeavor
4 to suppress radical and dangerous measures from within
5 the cabinet. When concerned that someone might do a
6 dangerous thing, the only possible way to prevent it
7 is to be near the person. From the conditions at the
8 time it was clear that to criticize the military at a
9 distance would have brought about disorder and chaos
10 and would not have changed conditions for the better.

Now we wish to call attention to the following facts in regard to the relations between the Pacific War and KAYA.

1. It was an undeniable fact that prior to his entry into the TOJO Cabinet such causes as would, viewed objectively, make the war inevitable had already been a fait accompli, for it was on October 18, 1941 that he joined the TOJO Cabinet. The Tripartite Pact was concluded in 1940. Before his entry into the cabinet there had been a decision made at the Imperial Conference held on July 2, 1941, with which he had nothing to do, and in accordance with that decision the Japanese expeditionary forces advanced into southern Indo-China. This action on the part of the Japanese Army was replied to by the United States, Great Britain and the Netherlands in the shape of freezing of the Japanese funds in these countries and an embargo on the export of petroleum products to Japan. This action on the part of the three countries proved a severe blow to Japan and made the American-Japanese negotiations more difficult for Japan. On account of this the Supreme Command of Japan was driven to take a very firm attitude. Later the decision made at the Imperial Conference held on a. Ex. 111.

September 6, 1941 created a situation that forcefully impelled Japan toward the opening of hostilities.

As is seen from these facts, KAYA became a member of the TOJO Cabinet under difficult conditions already created. Another fact we wish to draw your particular attention to is that KAYA entered the cabinet without any knowledge whatever of the said decision at the two Imperial Conferences held on July 2 and September 6, to say nothing of the particulars of the decision as stated previously.

2. It is true that KAYA was present at certain Liaison Conferences and Imperial Conferences, but he was not informed of many secret matters.

a. He was never a party to the deliberations on the warlike operations, nor was he informed of them beforehand as to when, where and how operations would take place. Needless to say, nobody outside the military was allowed to meddle with the plans of military action. This is acknowledged by the prosecution. It is a fact clearly proved by evidence on the independence of the Supreme Command in Japan and by other evidence.

a. KAYA was never in a position to
 a. Ex. 3655, #83, T. 36316; #91, T. 36331; #96, T. 36345;
 #111, T. 36366; #112, T. 36369; #115, T. 36375;
 #118, T. 36385; #120, T. 36391; #126, T. 36408;
 #127, T. 36409.
 Ex. 3646, #64, T. 35702; Ex. 3337, T. 30640, 30658;
 Ex. 3565, #19, T. 34676; Ex. 3336, T. 30627-30.

1 know or be informed beforehand of the plans of attacks
2 on Pearl Harbor and other places.

3 b. As for the proposition for a final effort
4 to be made by Japan to break up the impasse of her
5 negotiations with America in accordance with Ambassa-
6 dors NOMURA and KURUSU's telegram, which suggested a
7 compromise of the negotiations by telegram between the
8 President of the United States and the Emperor of
9 Japan, evidence shows that this proposition was dis-
10 posed of among TOJO, KIDO, SHIMADA and TOGO, and was
11 never submitted to any Liaison Conference or to any
12 cabinet meeting.
13 a.

14 c. President Roosevelt's telegram addressed
15 to the Emperor was likewise disposed of by TOJO and
16 TOGO. It was never presented at any of the Liaison
17 Conferences or of the cabinet meetings.
18 b.

19 d. KAYA was not informed as to the exact date
20 of the commencement of hostilities. It was necessary
21 for him to know the date of commencement of hostili-
22 ties in order to take adequate measures to prevent the
23 anticipated shock and disorder arising therefrom that
24 news of the commencement would cause to the financial

25 a. Ht. 3646, #66, #68; T. 35704, 35707; T. 3582044;
Ex. 3655, #108, T. 36360.

b. Ex. 3655, #129, T. 36410-11, Ex. 3646, #82, T. 30705-6.

circle. He, therefore, inquired of TOJO, SHIMADA and
HOSHINO and was finally able to know of the exact
date of the commencement of hostilities one or two
days previous to the actual commencement of war. a.

e. KAYA's position at the Liaison Conference
was as narrated in N-9-27. What I have said in the
SUZUKI summation in reference to the November 11 and
13 Liaison Conferences can be said in connection with
this summation on behalf of KAYA.

N-9-31-C. The testimony of the various
accused differ as to whether or not the notice for
declaration of war and the method of notification was
discussed at the Cabinet Meetings and Liaison Conferences.

We shall first of all argue from the stand-
point that the declaration notice was discussed at the
Liaison Conferences and Cabinet Meetings and that KAYA
was present at the meetings when the discussions took
place.

1. Question of no notice:

One of the accused testified that the navy
insisted on attacking without giving due notice.
Others deny this. Even if the first was true, the
responsibility rested with the navy and KAYA had no
part in it.

a. T. 30705-6.

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23 responsibility rested with the navy and KAYA had no
24 part in it.
25

a. T. 30705-6.

1 Again, TOGO, who testified that the navy
 2 wanted to make the attack without notice, stated that
 3 while ITO, who was Vice-Chief of the Navy General Staff,
 4 insisted on attacking without notice, he, ITO, with-
 5 drew his demand towards the end of the meeting.
 6 That at the very next meeting it was decided to give
 7 notice before attacking was brought out in the testi-
 8 monies of TOGO and TOJO.^{b.} From this we can conclude
 9 that KAYA was not liable to any criminal responsibility
 10 for being present at the meetings.

11 As to the time of delivering the note, full
 12 responsibility rested with the Supreme Command and
 13 the Foreign Minister.^{c.}

14 On the question of delivering the note after
 15 the opening of hostilities, it is clear from evidence
 16 that the government in Tokyo had no such intention.^{d.}
 17 Evidence tendered shows that the delay was inadver-
 18 tently caused by the officials at the Japanese Embassy
 19 in Washington, that it was not through any fault on
 20 the part of the Government in Tokyo. Even if the
 21

- 22 a. Ex. 3646, Sec. 74, T. 35714-6.
 23 b. Ex. 3646, Sec. 75, T. 35716; Ex. 3655, Sec. 120,
 24 T. 36390.
 25 c. Ex. 3655, Sec. 120, T. 36390.
 d. Ex. 2915, T. 26096-7; Ex. 3655, Sec. 120, 128,
 T. 36390, 36410; Ex. 1216, T. 10534-5; Ex. 1218,
 T. 10537; Ex. 3646, Sec. 75, 79, 81, T. 35716, 35722,
 35725.
 e. Ex. 2964, T. 26189; Ex. 2967, T. 26209.

1 Tokyo Government was responsible for the delay, surely
2 there could be no doubt that the Finance Minister had
3 no responsibility.

4 2. Question concerning the contents of the
5 note.

6 The question is whether or not the commence-
7 ment of hostilities is clearly expressed in the note.
8 We do not wish to argue whether it is necessary to
9 state clearly on the commencement of hostilities.
10 Even if such was necessary we contend there was no
11 evil intent or slip on the part of KAYA for evidence
12 shows that the draft of the notice was made by the
13 Foreign Ministry and was reported to the conference by
14 the competent official on diplomacy and the contents of
15 the note fulfilled the requirements under international
16 law.^a KAYA was not in a position to examine the note
17 and make corrections for he was not a competent official
18 on diplomacy, nor was he a specialist in international
19 law. For the average person, international law was
20 much more difficult to understand than domestic laws
21 for international law contains special terms, inter-
22 pretations of which was reserved by individual coun-
23 tries and there are cases in which actions by countries
24
25 a. Ex. 3655, Sec. 120, T. 36389-93; Ex. 3646, Sec. 76,
77, 78, T. 35718, 35719, 35721.

1 in contradiction to the terms of treaties have been
2 recognized as customary law. It is so complicated
3 that even the diplomats had to study the problems as
4 they arose. It was only natural for KAYA, who was
5 not versed in international law, to accept the
6 interpretation of the responsible competent official
7 on international law.

8 3. On the question of notification to Great
9 Britain.

10 The Foreign Minister concluded that to the
11 best of his knowledge, notification was not necessary^{a.}
12 and for the same reason mentioned in "2." KAYA had
13 no responsibility in the matter.

14 KAYA acknowledges the fact that he was
15 present at most of the Liaison Conference meetings,
16 but there is no evidence that he was present at the
17 meetings held in the beginning of December when the
18 notice was presumably discussed. Witness YAMAMOTO,
19 Kumaichi, has testified that he did not remember
20 whether KAYA attended the Liaison Conference meetings
21 held in December.^{b.} KAYA has also testified that he
22 did not remember whether he participated in the dis-
23 cussions on the Final Note.^{c.} This is only natural
24

25 a. Ex. 3646, Sec. 85, T. 35731.

b. Ex. 3331, T. 30615.

c. Ex. 3337, T. 30657.

considering the prevailing situation.

1 The decision for commencing hostilities was
2 reached at the Imperial Conference of December 1,
3 1941. Except for the extremely slight hope that war
4 might be averted by the negotiations reaching an under-
5 standing, KAYA realized that war was on hand.

6 For Japan, the greatest and most dangerous
7 war in its history was about to commence. KAYA was
8 extremely busy with the many tasks of his ministry.
9 His big job was to prevent financial chaos when news
10 of the commencement of war broke out. It was his
11 responsibility to look after increased war-time
12 expenditures, increased taxes, floating of huge bond
13 issues, establishment of air-raid insurance (at that
14 time a Finance Ministry responsibility) and other
15 big problems.
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1 After the question of peace or war was
2 decided KAYA took less interest in the Liaison
3 Conference. The Conference, too, did not require
4 his attendance and therefore, he attended the meetings
5 irregularly thereafter. Such being the case, it is
6 only natural that he missed the discussions.

7 For reasons stated we contend that KAYA
8 had no responsibility concerning the final Japanese
9 Note.

10 N-9-32

11 The prosecution referred to the establishment
12 of the 6th Committee. If, by this reference the
13 prosecution means that KAYA was responsible because
14 its membership was composed of Finance Ministry
15 officials, we wish to point out that the charge is
16 unfounded. Its members and secretaries were nominated
17 by the Prime Minister and worked under the direction
18 of the President of the Planning Board who was the
19 chairman of the Committee. There was nothing that
20 could be ascribed to the responsibility of the Finance
21 Minister. (a)

22 Further, the said Committee was created
23 after the decision on war and there was nothing in
24 itself that was possessed with a criminal nature.

25 (a) Ex. 1331, T. 11,944.

1 The establishment of the Greater East Asia
 2 Ministry became necessary with the progress of war.
 3 It was established for the purpose of dealing with
 4 matters arising between Japan and the countries
 5 cooperating with Japan. Therefore, there is no
 6 criminal responsibility for having participated in
 7 the discussions for its establishment.

8 ATROCITIES AND TREATMENT OF PRISONERS OF WAR

9 N-9-33.

10 There has been no attempt by the prosecution
 11 in any manner to offer any evidence in so far as this
 12 accused is concerned in relation to these charges.
 13 Their only contention is that his responsibility arises
 14 because he was a member of the cabinet. (a) (KAYA not
 15 only had the responsibility that every other member
 16 of the Cabinet had; we do not concede for a moment
 17 that KAYA had the same responsibility that every other
 18 member of the cabinet, but contend that responsibility
 19 of members of the cabinet was dependent upon the
 20 particular function of the cabinet minister, (b) and
 21 in the opening statement of Colonel Woolworth (c) and
 22 the testimony in the general phase, the name of Mr.
 23 KAYA is not adverted to in one single instance.) In
 24 support of our position we refer the Tribunal to the
 25 uncontradicted testimony of KAYA on this point. (d)

(a) T., p. 30,658-9

(b) T., p. 41,043.

(c) T., p. 14262-66

(d) T. 30,658

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(c) T., p. 14262-66

(d) T. 30,658

1 His statement of his knowledge and relation to this
2 subject is a complete answer to the charges in the
3 Indictment. "I, at least, was not even informed about
4 the acts of atrocity, either officially or otherwise.
5 Nothing about the acts of atrocity was mentioned in the
6 press or radio. I was not even informed about the
7 protests from foreign countries. I was of the impression
8 the war was being fought fairly." (a)

9 We have specifically answered each one of the
10 Counts on this subject in the Indictment in subsequent
11 pages and commend them to the Tribunal for its consider-
12 ation, which will serve a more useful purpose than by
13 our reading them at this time.
14

15 - - -
16 (A portion of the summation, which was
17 was not read, is as follows:)
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(a) T. 41043.

1 KAYA was merely a civil official; in
2 addition to this, the Cabinet in which he was Finance
3 Minister was, unlike those of the other countries,
4 powerless over the Army and Navy both in peace and war
5 and possessed only a limited power over matters concerning
6 war. The Cabinet had no power to participate in
7 operation matters in any way. For KAYA, who was a
8 member of the kind of cabinet just mentioned, to be
9 indicted and charged with counts under Murder was
10 beyond our expectation. Even at the Nurenberg Trials
11 there was no such counts based on such grounds.

12 While we believe the counts in this group
13 are lacking in legal reasons, we wish to deal with
14 them briefly to show that KAYA was not in a position
15 to be responsible for the Counts under this group.

16 1. Count 37

17 To charge KAYA with murder for deaths
18 caused by attacks without due notice is a gross
19 injustice. He was not the minister having jurisdiction
20 over the matter of giving notice, nor did he advocate
21 attack without notice. We have already shown in
22 N-9-31-C that he had no responsibility over the delay
23 in dispatching the notice or concerning the contents
24 of the notice.
25

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2. Count 38

1 KAYA has testified that he firmly believed
2 the war was a defensive war in which Japan was
3 fighting for her very existence. (a) We have already
4 clearly shown that at that time KAYA sincerely believed
5 so without fault, therefore, it is clear that to charge
6 KAYA with the responsibility of murder because he
7 assented to a war of aggression or a war against
8 treaty guarantees, etc. is unfair.

3. Count 39

10 It has been made clear by the testimony
11 of KAYA and other evidence that in Japan the Supreme
12 Command was an independent organ, which without
13 permit from the Cabinet or discussing the matter
14 over with the Cabinet or notifying the Cabinet before-
15 hand, decided on its own authority as to when and
16 how and where an attack will be made. As evidence
17 shows, KAYA did not know beforehand about the attack
18 on Pearl Harbor. (b) Therefore, there is no reason
19 why KAYA should be held responsible for battles in
20 which he had no part, nor could not even if he had
21 wanted to.

23 For the reason just stated and for reasons

24 (a) Ex. 3337, T. 30,657
25 (b) Ex. 3655, T. 36,408

1 related under Counts 37 and 38, it is clear that KAYA
2 had no responsibility with this count.

3 4. Counts 40-43

4 For the same reasons mentioned under Count
5 39, KAYA had no criminal responsibility for charges
6 under the above-mentioned counts.

7 5. Count 45.

8 Granted that the alleged atrocities by
9 Japanese troops in Nanking really happened, evidence
10 adduced shows that KAYA had no power to order or permit
11 them. KAYA has testified that he was not consulted
12 beforehand about the attack on Nanking, that he did
13 not know at the time of the alleged acts of atrocity
14 and that he was not in a position to know of them. (a)
15 His testimony was not contradicted and there is no
16 evidence to the contrary.

17 Witness ISHII, who was Chief of the East
18 Asia Bureau of the Foreign Office, has testified
19 in response to a query by prosecutor Comyns Carr that
20 the protests from foreign countries about the acts
21 of atrocity at Nanking were transmitted to the Army
22 and Navy, but other Ministries and the Cabinet meeting
23 were not informed about the protests. (b) KAYA did

24 (a) Ex. 3337, T. 30,640, 30,658

25 (b) T. 29,977, 29,980, 29,983, 29,987

1 not protest because he did not know such acts were
2 contemplated or taking place. It was only natural
3 he did not know about them.

4 5. Counts 46, 47

5 The attacks on Canton and Hankow, mentioned
6 in the above two counts, took place on the 21 and 27
7 October (a) respectively, that is, after KAYA's
8 resignation from the Cabinet on May 26, 1938. For
9 this reason and for reasons mentioned in other
10 counts, it is clear KAYA had no responsibility for
11 acts under counts 46 and 47.

12 N-9-33-

13 In regard to the Counts in Group Three, KAYA
14 has testified as follows:

15 "As to the acts of atrocity and other acts
16 in violation of the law of land warfare, I had no
17 connection with them whatsoever. In Japan the Supreme
18 Command existed as an independent organ from the
19 Cabinet and we, civilian members of the Cabinet, were
20 not informed beforehand or consulted on plans and
21 preparations for battles. Furthermore, we civilian
22 members of the Cabinet, had no power to command or
23 stop a battle. We had no voice in the choice of
24 commanders of the Army and Navy. I, at least, was
25 (a) Ex. 111

1 not even informed about the acts of atrocity, either
2 officially or otherwise. Nothing about the acts
3 of atrocity was mentioned in the press or radio. I
4 was not even informed about the protests from foreign
5 countries. I was of the impression the war was
6 being fought fairly.

7 "As to the treatment of prisoners of war,
8 I was not informed nor consulted about it either in
9 the Cabinet meetings or elsewhere, nor was I informed
10 about the protests from foreign countries. It was
11 said that in previous wars Japan had accorded good
12 treatment to prisoners of war. Concerning the treatment
13 of war prisoners during the Pacific War, I was not
14 in a position to even dream that ill-treatment was
15 being accorded to prisoners of war. I did not even
16 hear of rumors that prisoners of war were being
17 ill-treated. The press and radio made no mention of
18 it."^(a)

19 This testimony was not contradicted.

20 KAYA was merely a member of the Cabinet,
21 and was in no way concerned with the crime under
22 Group Three. There is no question other than that
23 of whether he was in a position to restrain or stop
24 any unlawful action though he had no authority to do so.
25 (a) Ex. 3337, T. 30,658-9.

1 Various protests filed by foreign countries were
2 mostly transmitted either to the War Ministry or the Naval
3 Ministry. None of them was ever conveyed to the Finance
4 Ministry. Nor were they presented at the Cabinet meet-
5 (a)
6 ing or at other conferences he attended.

7 Though we now find that the maltreatment of
8 POW and the breaches of international land warfare com-
9 mitted by the Japanese outside Japan proper were made an
10 issue of, in those days the Japanese public and the civil
11 officials being completely shut off from the outside
12 world, were kept ignorant of them and there is no evi-
13 dence to support the conjecture that KAYA was or ought
14 to have been informed of such unlawful conducts on the
15 part of the Japanese.

16 Again, the fact that KAYA consented to the
17 opening of hostilities cannot let anybody infer that he
18 gave his consent to the waging of a war in which breach
19 of international warfare law might be committed.

20 MR. LEVIN: (Reading continued)

21 The prosecution in its summation referred to
22 the Siam-Burma Railway and based its charge on the
23 conjecture that the construction of the said railway

24 (a) Ex. 1489, T. 12833; Ex. 2174, T. 15515;
25 Ex. 1488, T. 12821; Ex. 473, T. 5494;
Ex. 2171, T. 15510; Ex. 2172, T. 15511;
Ex. 2173, T. 15513.)

1 could not have been carried out without consultation
2 with KAYA. But there is no evidence in support. Even
3 if he had been consulted in that matter, there could
4 not be any question about his responsibility for the
5 alleged maltreatment of POW employed in its construction
6 work, so long as such consultation was concerned only
7 with the building of the railway itself. Only in
8 such cases where he was consulted about the maltreatment
9 of POW, his responsibility would be open to question
10 as insisted by the prosecution. The fact is that
11 KAYA knew for the first time of the employment of
12 POW in the said railway construction work and of their
13 mistreatment when the matter was brought to light at
14 this Tribunal. It is no wonder, for the Army had no
15 obligation to inform him of this matter. Needless
16 to add, he was never consulted or intimated about the
17 said railway before its construction was started.

18 The employment of POW in any labor was a
19 matter that the Army alone was to decide, which can
20 be seen from the fact that the War Minister was
21 responsible for the control and supervision of POW.

22 To sum up, KAYA was never consulted or
23 informed about the construction of the Siam-Burma
24 Railway and was never consulted, informed or knew
25 about the employment of POW in its work or the

1 maltreatment of POW employed in its construction
2 work, and there is no evidence to prove to the
3 contrary. Court Evidence No. 475 is a report of
4 inquiry into the employment of POW in the said railway
5 construction, but nothing is found therein that might
6 suggest that either the Finance Minister or the
7 Finance Ministry had anything to do with it.

8 By the above, we think we have clarified
9 that KAYA is not guilty of any count presented against
10 him, no matter what may be the legal construction of
11 the conspiracy or of the right of self-defense, etc.
12 We now wish to stress the following facts as data
13 for the Tribunal to pass correct judgment on this
14 defendant.

15 1. Either during the period when the Second
16 KONOYE Cabinet was in power or the period when the
17 Third KONOYE Cabinet was functioning, the Finance
18 Minister never attended any Liaison Conference (though
19 he attended Imperial Conferences.) But KAYA who
20 had neither a powerful political background nor any
21 personal relation with Premier TOJO^(a) used to attend
22 most of the Liaison Conferences held during the TOJO
23 Cabinet. As a matter of fact however there were
24 hardly any discussions on financial matters. Only
25 (a) Ex. 3322, T. 30,557; Ex. 3325, T. 30,586; Ex. 3330,
T. 30,606; Ex. 3337, T. 30,694.

1 one of such matters was given among various items of
2 study in October 1941, (a) though no record is available
3 as to what study was made on it. The problems
4 concerning goods and materials, industrial production
5 and transportation were vital issues at that time
6 and the problem of finance was of a secondary
7 importance. Then the question may arise why KAYA
8 who was not politically powerful and whose affairs
9 were of lesser importance attended the Liaison
10 Conference. It is considered possible that it was
11 because of the following reasons:

12 When joining the TOJO Cabinet he confirmed
13 the following points in his talk with TOJO:

14 (a) The negotiations then going on between
15 America and Japan to be continued for a peaceful
16 settlement.

17 (b) The liaison between the Cabinet and
18 the Supreme Command to be maintained effectively
19 to ensure peace.

20 It is considered possible that KAYA frequently
21 attended the said Liaison Conference as its meeting
22 was held with these two items as the main issues of
23 discussion.

24 If such was the case, here is a very curious

25 (a) Ex. 3331, T. 30,611

phenomenon. It is a curious phenomenon for none
1 of the Cabinet Ministers who attended the Imperial
2 Conference on December 1, 1941 at which they decided
3 on war and consented to such decision, but who did
4 not attend most of the Liaison Conferences, were not
5 indicted. One of them, the then Minister of
6 Agriculture and Forestry was released months ago,
7 and it is said that a decision has been made not to
8 indict other Cabinet Ministers on a charge of crime
9 against peace.
10

11 What difference, then, does there exist
12 between KAYA and those Cabinet Ministers? If ever
13 there was any difference, it was that KAYA, unlike
14 those Ministers, was present at most of the Liaison
15 Conferences and zealously endeavored to avoid the
16 war. It so happened that KAYA, who dedicated himself
17 to the cause of peace and strived hard to avert a war,
18 confirmed TOJO's intentions before joining his cabinet
19 and on this account was made to attend the said Liaison
20 Conferences. If that were the reason, whereas other
21 State Ministers escaped indictment, KAYA was indicted
22 merely because he attended the Liaison Conferences.
23 He, who was unusually zealous in the maintenance of
24 peace, had been indicted on a charge of crime against
25 peace. There can be no greater paradox than this.

1 2. It has been proved that he did not intend
2 in any way to commit a breach of international law
3 and treaties, but the fact that he was not only far
4 from indifferent to international law but was a man
5 who respects it can be verified by the absence of
6 any evidence against him of his having ever perpetrated
7 a breach of the international law or any international
8 treaty in the conduct of his affairs in the Finance
9 Ministry as its chief. To substantiate this we might
10 cite the following instances:

11 (a) As for the finance of the Japanese-
12 mandated islands in the Southern Seas it was provided
13 by a treaty that no revenues from those islands should
14 be used as military expenditures of Japan. Hence,
15 he never used it as a source of revenue to meet
16 war expenses, however huge the military requirements
17 might be. There is no evidence whatever to the contrary.

18 (b) During the Pacific War all alien
19 properties in Japan proper were under his custody,
20 and he gave lawful directions in dealing with these
21 properties. No evidence has been adduced of his ever
22 having taken unlawful measures on these properties.

23 THE PRESIDENT: Mr. Levin, you are not
24
25

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11 (a) As for the finance of the Japanese-
12 mandated islands in the Southern Seas it was provided
13 by a treaty that no revenues from those islands should
14 be used as military expenditures of Japan. Hence,
15 he never used it as a source of revenue to meet
16 war expenses, however huge the military requirements
17 might be. There is no evidence whatever to the contrary.

18 (b) During the Pacific War all alien
19 properties in Japan proper were under his custody,
20 and he gave lawful directions in dealing with these
21 properties. No evidence has been adduced of his ever
22 having taken unlawful measures on these properties.

23 THE PRESIDENT: Mr. Levin, you are not
24
25

1 obliged to meet things that are not charged against
2 you. All this is outside the evidence.

3 MR. LEVIN: I think I quite agree with the
4 Tribunal. Mr. KAYA felt that this was sort of an
5 offensive statement rather than a defensive one. I
6 think if we had more time to go over the summation after
7 it had been prepared it might have been omitted. I
8 regret it was in the summation, if the Tribunal please.

9 THE PRESIDENT: We can draw no conclusions,
10 either, from the fact that other ministers were not
11 charged. We do not know what the circumstances were;
12 that is beyond our province.

13 MR. LEVIN: On the whole I quite agree
14 generally with the suggestion of the Tribunal, but I
15 do think it offers a parallel which the Tribunal might
16 give some consideration to.

17 In view of the President's statement I shall
18 omit the paragraph at the top of page 184, and I shall
19 also omit paragraph 3 and 4 and go to page 188, if the
20 Tribunal please.

21 The bottom of page 188:

22 The following two points should be taken
23 into consideration.

24 (a) One of the points is whether or not it
25 was his fault to have judged that it was unavoidable

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1 for Japan to open hostilities or to send her forces
2 in order to ensure her self-defense. As regards
3 this point, the position he was in was as follows:
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1 He had for himself no means to obtain infor-
2 mation whatever, so that he had to rely solely on
3 information furnished by the ministries of Foreign
4 Affairs, War and Navy and by the High Command in re-
5 gard to the intentions of foreign countries and other
6 international circumstances. It could not be helped
7 that he had to depend upon the views of the Prime
8 Minister and other cabinet members including Ministers
9 of Foreign Affairs, War and Navy as well as of the High
10 Command to form his own judgment.

11 It is true that he should have discounted
12 some of the informations and views on some occasions,
13 and it is considered probably he did so. But it must
14 be admitted that he had no other sources available to
15 him on which to base his judgment, being placed in such
16 a position as he was. Even if there were facts and
17 information that have been brought to light later but
18 that were not available to him at that time, his failure
19 to avail himself of such facts and information could not
20 be ascribable to his fault.

21 (b) As to whether the gradual extension of the
22 China Incident was absolutely unavoidable for Japan he
23 came to harbor some misgivings since the beginning of
24 1938 (though he had no data to make him conclude Japan
25 was wrong.) Further he came to question whether the

1 action Japan was then taking was a wise measure for
2 Japan. This (narrated later) coupled with the militarist
3 opposition to his retention in office accounted for his
4 resignation.

5 CONCLUSION

6 A. FIRST PERIOD.

7 We submit that the evidence establishes that
8 during the first period referred to by the prosecution
9 of KAYA's connection with the Government, that is, until
10 he became Minister of Finance in 1937, he indicated
11 his peaceful attitude, intentions and opposition to the
12 military from the early 20's when, at the London and
13 Geneva Naval Conferences, as a government official in
14 a minor capacity, he exerted every effort to obtain the
15 agreement for the reduction and limitation of naval
16 armaments; that he was not, and did not, participate
17 in a conspiracy or participate in planning or initiating
18 an aggressive war; and that he is not guilty of
19 the charges contained in any of the Counts of the Indict-
20 ment covering that period.

21 B. SECOND PERIOD.

22 That during his brief tenure as Finance
23 Minister in the First KONOYE Cabinet he was opposed to
24 the extension of the China Incident; that he was
25 Finance Minister such a short period of time before the

1 incident occurred that it would have been impossible for
2 him to have known that the incident was contemplated or
3 planned; that he had no part in, and had nothing to do
4 with, and that he did nothing to further the Manchurian
5 Incident; and his opposition thereto and well known
6 attitude for peace is indicated by the fact that he was
7 requested to resign.

8 C. THIRD PERIOD.

9 That when he was President of the North China
10 Development Company he performed his functions within
11 the confines of his duty as an administrator; that the
12 North China Development Company, as admitted by the
13 prosecution, was not to engage directly, and did not, in
14 business enterprises; and that as President of the
15 North China Development Company, he was under the direct
16 control and supervision of the China Affairs Board; that
17 he had nothing to do with the armies in North China and
18 Manchuria; and the evidence is uncontradicted that the
19 North China Development Company did not furnish these
20 armies with financial or other assistance.

21 D. FOURTH PERIOD.

22 That having been in China until shortly before
23 the formation of the TOJO Cabinet, he joined the TOJO
24 Cabinet only after inquiry from TOJO as to what the new
25 Cabinet proposed to do in relation to certain problems

1 which he noised to TOJO, and was assured it would be the
2 policy of the new Cabinet to carry on in accordance with
3 KAYA's position for peace, and successful termination of
4 the negotiations between Japan and the United States;
5 that though unacquainted with the decisions of July 2
6 and September 6, 1941, when he entered the TOJO Cabinet,
7 the subsequent rescission of the September 6, 1941,
8 decision of the Imperial Conference was affirmative
9 evidence of the good faith of the promise made by TOJO
10 to KAYA to continue Japanese-American negotiations for
11 the peaceful settlement of their differences, which
12 certainly justified KAYA's belief in respect thereto.

13 There is to be deleted the next three lines
14 beginning with "and" and ending with "High Command."

15 That the military currency was prepared at the
16 request of the War Ministry long before KAYA became
17 Finance Minister in the TOJO Cabinet, and that arrange-
18 ments were only made for its deposit in the Bank of
19 Japan for use "in the eventuality of an unexpected war;"
20 that decision for war was not decided at the time; that
21 he did everything in his power to avert war with the
22 United States that a civilian member of the Cabinet could
23 do, and was one of two men who obtained postponement of
24 the decision of November 1, 1941; that when subsequently
25 he was advised by those charged with responsibility that

1 the Hull Note was an ultimatum, and that the war was for
2 defense, as a civilian member of the Cabinet he can be
3 charged with no responsibility under the various Counts
4 in the Indictment. He was "not responsible for the
5 aggressive policy followed by Japan" as alleged by the
6 prosecution, and the acts and statements which he made
7 were made "by him in the course of his official duties
8 pursuant to an already established policy."^{a.}

9 The prosecution does not contend that there is
10 any evidence in the record to sustain the Counts of the
11 Indictment in Groups 2 and 3 against KAYA.

12 We submit that the entire case of the prose-
13 cution against KAYA is of the same tenuous character as
14 that indicated in its presentation with reference to
15 Groups 2 and 3, and that there should be a finding of
16 not guilty as to him on all of the Counts in the
17 Indictment with which he is charged.

18 The prosecutor has made reference^{a.} to almost
19 every event that occurred from 1931 to 1945^{b.} (date of
20 surrender) not even excluding the period from 1917 and
21 thereafter when he first entered the Finance Ministry as
22 a clerk by competitive civil service examination^{c.} and
23 desires the Tribunal to sustain the charges in the Indict-
24 ment against KAYA on the basis of those events, the vast
25 (a, b, & c. T. 41025, 41026, 41028, 41029.)

1 majority with which he had absolutely nothing to do, and
2 there is no contention in respect thereto in the evidence.
3 No person, no event, no occurrence is omitted.

4 I am reminded of the remark attributed to
5 Chancellor Thurlow when informed that the Attorney
6 General had taken nine hours for his opening in the
7 famous treason trial of John Horne Tooke. "Nine hours,"
8 exclaimed gruff old Chancellor Thurlow when he was told
9 of the Attorney General's opening. "Nine hours! Then
10 there is no treason, by God." In the language of
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Chancellor Thurlow, then there is no crime., by God.

1 Mr. President and Members of the Tribunal,
2 I now conclude our summation with absolute sincerity
3 in the integrity of our defense.

4 "The first four acts already passed,

5 "The fifth, will see the closing of the drama
6 of the day,

7 "Time's noblest offspring is its last."
8

9 - - -

10 THE PRESIDENT: Mr. McManus.

11 MR. McMANUS: Mr. President and Members of the
12 Tribunal, with your permission I shall resume with
13 ARAKI's summation, starting at page 248, paragraph 206:

14 206. Cabinet Councillors of the First KONOYE
15 Cabinet.

16 Having failed in causing General ARAKI and
17 others to be reinstated in the army, Prince KONOYE
18 created on 15 October, 1937, the Cabinet Councillor
19 system for the disposition of the China Incident, and
20 appointed ARAKI a councillor. Circumstances surround-
21 ing his appointment are related in ARAKI's affidavit.
22 Indeed this Cabinet Councillor system was created by
23 Premier KONOYE² for a speedy disposal of the China
24 Incident and was of entirely different character from
25

(1 Ex. 3161, T. 28200.

2 Ex. 3161, T. 28201.)

1 the Cabinet Councillor system established in March,
2 1943, to cope with various problems relating to the
3 Pacific War.

4 In view of the fact that both offices are
5 referred to in the transcript as Cabinet Advisors, it
6 is purposely mentioned here lest the term should lead
7 to a misunderstanding.

8 It is due to a misinterpretation that the
9 exhibit No. 2217 says, "It was compulsory to attend,"
10 and it should be corrected as, "The meeting was
11 scheduled for once or twice a week." ¹ In the same
12 way, "I attended all the meetings," should be, "I
13 attended almost all the meetings." Two statements in
14 exhibit No. 2218 that "when I was Minister of Education,
15 I did not attend these meetings," and that "if a
16 question regarding foreign policy came up, this would
17 be discussed at the usual cabinet meetings," are contra-
18 dictory to each other. It is the contention of the
19 accused, these statements should read, "Questions con-
20 cerning diplomatic policies were to be discussed at the
21 Five Ministers' Conference," and, "I did not attend
22 these Conferences."

23 As has been pointed out, these mistakes were
24 caused through interpreters' confusion who were unable
25 (1 T. 28226.)

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21 Five Ministers' Conference," and, "I did not attend
22 these Conferences."

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24 caused through interpreters' confusion who were unable
25 (1 T. 28226.)

1 to distinguish¹ between the question of principle and
2 that of practice.

3 While ARAKI was a Cabinet Councillor he was²
4 unable to participate directly in Chinese problems.

5 I shall now omit the balance of that paragraph
6 and proceed to paragraph 207 on the next page.

7 207. Rape of Nanking.

8 Instead of holding conferences among themselves,
9 the Cabinet Councillors were merely to give advice
10 directly to Premier KONOYE; despite the initial expect-
11 tation of their own importance, theirs was an unpaid
12 honorary position with no authority. As a matter of
13 fact, not a single important question was ever referred
14 to them.³

15 As ARAKI's affidavit states, it is a fact that
16 as a Cabinet Councillor he exerted his efforts for a
17 speedy solution of the China Incident.⁴

18 For the simple reason that ARAKI was a Cabinet
19 Councillor at the time of the fall of Nanking the prose-
20 cution allegedly charges him with some responsibility
21 for the massacre at Nanking. This is not reasonable,
22 for why should a Cabinet Councillor who was vested with
23

24 (1 T. 28227.
25 2 T. 28487.
3 T. 28202.
4 T. 28203.)

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4 T. 28203.)

1 little political power and much less with military
2 authority be charged with such a responsibility? ¹ As
3 for moral responsibility, we claim there is none because
4 ARAKI was then totally unaware of the incident, and
5 was unable to present his views.

6 This fact was made abundantly clear by ARAKI's
7 answer to Mr. Comyns Carr's cross-examination on 12
8 September 1947. ² We maintain therefore that this charge
9 is entirely without foundation.

10 B. ARAKI as Education Minister.

11 208. Circumstances surrounding ARAKI's appoint-
12 ment as Education Minister.

13 Premier KONOYE appointed ARAKI a Cabinet
14 Councillor. However, as Cabinet Councillors had no
15 authority and being outside the Cabinet, they had no
16 opportunity to influence cabinet conferences by voicing
17 their views, Prince KONOYE effected a large-scale
18 cabinet reorganization on 26 May 1938. As the result,
19 ARAKI was appointed the Education Minister, General
20 UGAKI, Foreign Minister and IKEDA, Seihin, Finance
21 Minister. A little later ITAGAKI was made the Army
22 Minister.
23

24 209. The Five Ministers' Conference.

25 (1 T 28202.
2 T 28407.)

1 Soon after his reorganization of the cabinet,
2 Premier KONOYE adopted the system of the Five Ministers'
3 Conference. Thus, important matters related to the China
4 Incident were deliberated upon and decided by Premier,
5 Foreign, Finance, Army and Navy Ministers. It so
6 happened, therefore, that though ARAKI entered the
7 cabinet, he was not given the opportunity to participate
8 actively in the disposition of the China Incident.

9 Under the HIRANUMA Cabinet the same situation
10 prevailed, and no important diplomatic and military
11 problems were ever considered at cabinet conferences.
12 ARAKI, accordingly, was aware of neither such problems,
13 nor the Governmental statement set forth in the court
14 exhibit No. 1291, prosecution document No. 1644.¹

15 209. Having no connections with military
16 operations at the front, Education Minister ARAKI was
17 totally excluded from military and diplomatic affairs
18 relating to the China Incident. He was thus a cabinet
19 minister by name only. The situation was the same under
20 the HIRANUMA Cabinet so far as ARAKI was concerned.

21 Since military operations at the front were not
22 submitted for the consideration of the cabinet confer-
23 ences in general, either before or after their execution,
24 there is no reason whatsoever that an Education Minister
25 should be held responsible for them.

(1 Ex. 3169, T. 28487, ISHIWATA's affidavit, Ex. 3170,
T. 28508; Ex. 3161, T. 28215.)

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1 The prosecution is charging ARAKI with the
2 responsibility for the massacres at Hangkow and Canton,
3 and also for the execution of the China Incident.
4 However, these are operational matters pure and simple,
5 and as such they were not revealed beforehand to ARAKI,
6 who merely listened to reports after the operations
7 had taken place. So far as the massacres are concerned,
8 he was not aware of them at any time. Because of the
9 existence of the Five Minister's Conference; and be-
10 cause operational matters were handled exclusively by
11 the High Command, cabinet ministers who were not
12 directly concerned with these matters knew nothing
13 about them.

14 The only instance was one immediately after
15 ARAKI's appointment as the Education Minister; he
16 discussed the situation with the Premier in the
17 presence of the Home Minister SUYETSUGU. When ARAKI
18 proposed an immediate termination of the China Inci-
19 dent, SUYETSUGU held a view diametrically opposed to
20 his, and the two had a heated argument. After that
21 ARAKI refrained from participating in any further
22 arguments.^{1.}

23 Since such a strange Five Ministers' Confer-
24 ence was empowered then to deliberate upon and decide
25

1. ARAKI's Interrogatories; Ex. 2218.

1 matters, we reiterate again that ARAKI as an Education
2 Minister cannot be held responsible for the execution
3 of this China Incident.

4 The question of the Tripartite Pact was
5 under discussion by the Five Ministers' Conference
6 during the HIRANUMA Cabinet. Since a final decision
7 was not reached, the question was not submitted to the
8 Cabinet Conference. As for matters relating to the
9 Wang Ching-wei Government, they were proceeding under
10 cover of secrecy. So much so that the Education
11 Minister ARAKI was not aware even of Wang's coming
12 to Japan.¹

13 The prosecution, we contend, has offered no
14 accurate proofs against ARAKI on the foregoing points.

15 211. General educational administration.

16 A. Concerning education while ARAKI was the
17 Education Minister, the prosecution charged him only
18 for the alleged strengthening of military education.
19 It suffices, therefore, for the defense to refute the
20 prosecution's contention on this point alone. It is
21 our belief, however, that to elucidate what sort of
22 educational administration ARAKI put into effect on
23 what ideals while he held the Education Ministership
24 is to prove that he never participated in the alleged
25

1. Tr. 28216.

1 common conspiracy for any aggressive war or the
2 execution thereof as claimed by the prosecution.

3 212. B. Under paragraph 20 on page 49¹.
4 of his affidavit ARAKI states:

5 "The most serious apprehension of Japan at
6 that time was the disturbance of ideological circles.
7 There was a time when communism spread widely among
8 the people, and once it became the tide of public
9 opinion; then there was a time, later, when people
10 followed Nazism or Fascism. This trend gave rise to
11 complications between the liberalism which had also
12 existed at that time, and caused a terrible state of
13 chaos.

14 "The several unfortunate incidents which
15 arose from the current situation at that time were
16 due to the disturbance of thought on the part of the
17 people. On the other hand, the rise of the Nippon
18 spirit tended to create a dogmatic nationalism, which
19 from its lack of ubiquity, was apt to fall into
20 extreme rightism and was pregnant of much danger. The
21 cause of this defect was due to the fault of perfunctory
22 education which had a tendency of making the people
23 lose sight of ideological independence and lofty
24 ideas. In order to reform this, I advocated that
25 1. Tr. 28207.

the Imperial virtue of benevolence and tolerance,
1 which had been the basic spirit from the time of the
2 foundation of our country, should be borne in mind
3 and cultivate in it an ubiquitous character which was
4 welcome in all the modern civilized countries of the
5 world. Imperial admonition was my guiding principle
6 when attending to this work, inasmuch as the Imperial
7 admonition was teaching us the basic principle of
8 humanity with His Majesty's generosity, and I con-
9 sidered that that was the code that the people should
10 observe. This principle, which had been the basic
11 spirit from the time of the foundation of the Empire,
12 was entirely different from militarism, but it was
13 the one essentially required for the correction of
14 the defect in ideological circles at that time."¹.

16 Thus, ARAKI's ideals, which the prosecution
17 calls extremely militaristic, are in reality tended
18 toward neither communism, nor Nazism, nor narrow
19 nationalistic rightism, but are the same basic
20 ideals of peace and humanism common among all modern
21 civilized nations. It was ARAKI's desire to prevent
22 the Japanese from falling in either one of these
23 extreme ideas through a thorough recognition of this
24 basic spirit. For this purpose ARAKI as the Education
25 1. Tr. 28209.

Minister adopted this ideology as the basic policy
of education.

213. C. In line with this policy the
following concrete measures were taken:

(1) Lest Japan's youth should be influenced
by the Nazi ideology, ARAKI gave orders to have the
group of boys visiting Germany visit also England and
France.^{1.}

(2) ARAKI expressed the strong desire that
Japan should conclude the cultural agreement not with
Germany alone, but with any other countries having
such desire.^{2.}

(3) Declared publicly that no country could
depend upon armed might for being permanently a
first-class Power, that a state could become a real
first-class Power by her cultural merits alone.^{3.}

(4) Encouraged researches in basic sciences
and provided for scholarships and subsidies; also
encouraged technical education.^{4.}

(5) When the suspension of school English
courses was advocated because of adverse sentiment
toward America and England during the China Incident,

1. Ex. 2378, Tr. 28526.

2. Tr. 28526.

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4. Tr. 28527.

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3. Tr. 28527.

4. Tr. 28527.

1 ARAKI sounded warning against this exclusive
2 dogmatism, and refused to consider such an argument.
3 Instead he instructed the general public that the
4 nation should not boast of its racial superiority,
5 but should try to become one to be loved and praised
6 by others.^{1.}

7 (6) Throughout the tenure of office as the
8 Education Minister, he instructed the general public
9 that in accordance with Emperor MEIJI's wishes the
10 Japanese should make thorough studies of the occi-
11 dental culture, and strive neither to be affected by
12 Fascism, nor become narrow-minded.^{2.}

13 (7) Regarding the deaf and mute training
14 he always stressed in citing the instance of Miss
15 Helen Keller that the divine faculties should be per-
16 fected.^{3.}

17 (8) Whenever American-born Japanese were
18 troubled about American-Japanese problems, he invar-
19 iably requested them to be exemplary American citizens
20 and to lend a hand in removing misunderstanding between
21 the two countries.^{4.}

22 214. D. Though its forepart is styled after
23

- 24 1. Tr. 28528.
25 2. Tr. 28529.
3. Tr. 28529.
4. Tr. 28529.

1 the form of instructions issued by Governmental
2 offices during an incident, even exhibit 138¹ in
3 its latter half contains the following views by
4 ARAKI:

5 "The worth of a state, internationally, is
6 judged according to the amount of respect it enjoys
7 from the rest of the world, and the character of a
8 country depends upon the moral virtues of students
9 and pupils who are responsible for shouldering the
10 future. Students and pupils should be highly proud
11 of themselves. They should polish up their character;
12 cultivate their personality; endeavor constantly in
13 the pursuit of learning and culture lest they be
14 shunned in the least. They must also do the duties
15 that are required of them at the present time."

16 This view by ARAKI was added on to the fore-
17 part of the exhibit consisting solely in what was
18 composed perfunctorily by the secretariat of the
19 Ministry. The whole thing was aimed at uplifting
20 the moral standard of students in general.

21 216. No strengthening of military education.

22 (1) OHUCHI, Hyoye, a prosecution witness,
23 testified on 19th June 1946 as follows:

24 1. Pros. Doc. No. 7113.
25

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2 offices during an incident, even exhibit 138¹ in
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24 1. Pros. Doc. No. 7113.
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1 "* * * military training * * * becoming
2 compulsory in 1938 when General ARAKI became
3 Minister of Education * * *. General ARAKI as
4 Minister of Education ordered compulsory military
5 training and lectures in all universities." /
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1 However, in answer to Defense Counsel OKUYAMA's
2 cross-examination, OHUCHI answered:

3 "I have not heard that directly as a school
4 authority, but I have only heard it indirectly."

5 The witness' answer revealed his testimony
6 is based on hearsay.¹

7 As shown in the defendant KIDO's affidavit,
8 OHUCHI was not familiar with the actual state of
9 affairs, as he was imprisoned one year and six months
10 after his arrest in February, 1938. All that he testi-
11 fied to in this connection is what he heard after his
12 release from the prison.

13 OHUCHI testified too that ARAKI had nothing
14 to do with his arrest.

15 217. KAIGO, Tokiom1, a prosecution witness,
16 gave on 18th June, 1946, the following answer when
17 questioned by the prosecutor Mr. Hammack:

18 "Q In addition to lectures on military sub-
19 jects given at any time, did actual military training
20 become compulsory in the universities?

21 "A It was decided in the year 1939 to in-
22 troduce military drill with rifles. And it was put
23 into practice since September of the same year. But
24

25 1. Tr. 979

1 at that time students were told to conduct rifle prac-
2 tice only on the occasion of field maneuvers, and on
3 other occasions they were supposed to attend lectures
4 only."¹

5 It should be noted that beginning September,
6 1939, ARAKI was no longer holding the office of Educa-
7 tion Minister.²

8 "A In November, 1941, the outline of the
9 instruction in military drill was issued; after the
10 issuance of the outline, training with rifle was con-
11 ducted at universities also."³

12 Unlike witness OHUCHI, who was a professor of
13 economics, and was imprisoned for an extensive period,
14 witness KAIGO is a university professor specialized
15 in history of Japanese education who took actual charge
16 of training.⁴

17 "Witness KAIGO's testimony is not hearsay
18 evidence like OUCHI's but is based upon his specialized
19 study and personal knowledge gained through his ex-
20 perience in handling actual affairs.
21

22 218. The following points have been made
23 clear through witness KAIGO's testimony:

24 1. Tr. 889

25 2. Ex. 203, ARAKI's curriculum vitae

3. Tr. 889

4. Tr. 936

1 a) Military education at Japanese educa-
2 tional institutions is of long standing.

3 b) Military education has been instituted
4 since the Meiji Era after the example of advanced
5 countries of the world which adopted the policy of
6 wealthy nation, powerful army.

7 c) Revisions were made after the World War
8 I for various reasons

9 1) As a countermeasure for the reduc-
10 tion of armaments.

11 2) For the correction of frivolous ideas.

12 3) As a counter-measure for the anti-
13 militaristic ideas.

14 d) Military education was not instituted
15 with aggressive intention.

16 e) Bolstering of the system with the out-
17 break of the China Incident and the Pacific War was
18 but natural.

19 f) No connections existed between the Educa-
20 tional Council and the military education.

21 g) Racial superiority of the Japanese was
22 not taught in connection with military education.

23 Witness KAIGO also stated as follows:

24 a) Military education has been continuously
25 given at Japanese educational institutions since 1934.

b) Officers in active duty were first attached to schools and colleges prior to 1925 (at the same time military training system was put into effect at all universities; and the system became compulsory at high schools, normal schools, and colleges).

c) It was in September, 1939, that military drill (field drill with rifle) was put into practice at universities in addition to classroom lectures.

It should be noted that ARAKI had already resigned in August, 1939.¹

d) Indoor drill with rifle was instituted in November, 1939, when ARAKI was no longer Education Minister.²

c) The Educational Council was established in 1937, and through its operation policy for the revision of text-books was laid down in 1939.

In view of these facts it is clear the prosecution's charge that ARAKI as Education Minister brought educational institutions under the influence of militarism is unfounded on the facts.

219. Question of the compulsory system of young men's schools.

The prosecution charges that as to attend the young men's schools was made compulsory while

1. Ex. 203, ARAKI's Curriculum Vitae

2. Ex. 203, ARAKI's Curriculum Vitae

1 ARAKI held the Education Ministership, it amounts to
2 that he made the military education compulsory.

3 However, to make the attendance at young
4 men's schools compulsory was decided upon long before
5 by various educational advisory organs. Later their
6 recommendation was submitted to the Educational Council,
7 which after due deliberation returned its findings.

8 By the time ARAKI was appointed the Education Minister
9 necessary official procedures had been completed,
10 and the order making the system compulsory was issued
11 by him as an official routine.¹

12 220. In his affidavit² witness YOSHIDA testi-
13 fied that "up to 1939 military drill was an elective
14 subject at universities."³

15 However, witness YOSHIDA was a section head
16 of the War Ministry, and bears no comparison with the
17 witness KAIGO, who is a specialist in the subject.
18 In view of KAIGO's testimony, it is clear that the
19 two items in witness YOSHIDA's evidence were based
20 upon his misunderstanding.

21 As witness IWAMATSU successively served as
22 the Chief of the Archives Section and the Secretariat
23 Section of the Education Ministry, his testimony on
24

25 1. Tr. 28,585
2. Ex. 2377
3. Tr. 18,461

1 Japan's educational system is impeccable in its pro-
2 bative value.

3 While submitting evidence IWAMATSU was tem-
4 porarily subjected to prosecutor's challenge in connec-
5 tion with the matter of "sponsor." That his testimony
6 stated the truth should be clear in view of the fore-
7 going.¹

8 221. General Chin Te-chun, a prosecution
9 witness, stated on 24 July, 1946, in answer to the
10 defense counsel's cross-examination that "the central
11 government order was received in the spring of 1936.
12 But prior to that some of the schools had already put
13 up these courses by themselves. In 1937 there was
14 some concentrated training."

16 From his testimony it is clear that China
17 issued already in 1936 an order concerning the mili-
18 tary drill at various schools. Inasmuch as national
19 defense is a relative matter, it is but natural for
20 Japan to assume a positive counter-measure when her
21 antagonist in an incident adopted a policy of a con-
22 centrated military education.

23 Testimony by witness KAIGO and IWAMATSU
24 made it abundantly clear that it was beginning 1941
25

1. IWAMATSU's testimony; par. 20 of ARAKI's affidavit;
Tr. 18,563

1 that the military education system in its true sense
2 was established and stressed at Japanese universities
3 and other educational institutions. When this took
4 place, ARAKI was no longer the Education Minister.

5 THE PRESIDENT: We will recess for fifteen
6 minutes.

7 (Whereupon, at 1445, a recess was
8 taken until 1500, after which the proceed-
9 ings were resumed as follows:)
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MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. McManus.

3 MR. McMANUS: 222. ARAKI as Chairman of
4 National Spiritual Mobilization Committee.

5 The prosecution declared that they were not
6 charging ARAKI with this.¹

7 III Monopoly of Opium.

8 223. The prosecution introduced for the
9 first time in its summation the allegation that ARAKI
10 was connected with the monopoly of opium. However,
11 in going through all the testimony which has been
12 presented in this relation, we fail to find a
13 scintilla of evidence which proved even in the remot-
14 est way the responsibility of ARAKI re this matter,
15 either as War Minister or Education Minister.
16

17 AA-53, the prosecution summation, asserts
18 that an agreement has been reached between Manchukuo
19 and Japan. This is nothing more than an assertion
20 that a free transaction between two countries was
21 approved by the cabinet meeting of Japan.

22 In AA-54 it deals with the establishment of
23 the opium monopoly system in Manchukuo, but there is
24 not the slightest evidence to show any connection
25

1. Tr. 28,536

1 with War Minister ARAKI.

2 AA-55 explains the relations between Man-
3 chukuo, Formosa Government General and the Bureau
4 for the Kwantung Leased Territories. While it shows
5 that the matter was decided upon at the cabinet
6 meeting, upon enquiry to the Opium Committee, it
7 does not refer in any way to the responsibility of
8 Education Minister ARAKI.

9 The question of opium has fully been covered
10 in the Manchurian Phase of the general summation so
11 we will not go any further into this question.

12 By the foregoing we contend that while he
13 was Education Minister, he neither strengthened nor
14 desired to strengthen military education in schools.
15 I shall omit the balance of that paragraph.

16 Chapter VI. Japan-Soviet Relations and
17 ARAKI.

18 224. The prosecution charged that ARAKI had
19 aggressive designs against the Soviet Republic, and
20 that he laid railroad lines in and exploited Man-
21 churia in connection with the Manchurian Incident in
22 order to make preparations for launching an attack
23 against the Soviets. In order to prove this the
24 prosecution held that ARAKI executed repeated attacks
25 against the Soviets, and that as the Education

1 Minister, ARAKI participated in the Changkufeng and
2 Nomonhan Incidents; it relied upon its witness
3 TANAKA's testimony that as a leader of the Kodo-kai,
4 ARAKI harbored ill will toward the Soviets; and it
5 produced for this purpose several newspaper and
6 magazine articles of insufficient probative value
7 and a few additional witnesses.

8 I shall omit the next sentence.

9 The prosecution's contention and the points
10 it intends to prove relate to the following Counts:

11 (1) Count Nos. 25, 26, 35, 36, 51, and 52
12 concerning the Changkufeng and Nomonhan Incidents.

13 II Refutation of exhibits and Counts.

14 225. Counts 25, 26, 35, 36, 51 and 52
15 hold ARAKI responsible for Changkufeng and Nomonhan
16 Incidents while he was the Education Minister. As
17 has been proved in the foregoing section, throughout
18 the First KONOYE and the HIRANUMA Cabinets important
19 state affairs were discussed exclusively by the Five
20 Ministers' Conference composed of the Premier, Army,
21 Navy, Foreign and Finance Ministers. ARAKI as the
22 Education Minister never participated in those con-
23 ferences. Again, in Par. 23 of ARAKI's affidavit it
24 shows the Education Minister's position in the cabin-
25 ets at that time. He could not therefore take part

1 in the discussion of international questions.

2 226. The prosecution made references to
3 ARAKI's interrogatories.¹ As has been pointed out
4 no charge should be based upon the interrogatories,
5 as they contain numerous mistakes.

6 227. Now what was cited in TAKEBE, Rokuzo's
7 affidavit² was not a prefectural governor's conference.
8 The fact was that ARAKI as the War Minister invited
9 for luncheon the prefectural governors who were ad-
10 visors to the Servicemen's Relief Association. On
11 the occasion ARAKI gave an address expressing his
12 appreciation for the assistance the governors rendered
13 to the Association.

14 That ARAKI made no reference whatsoever to
15 an aggressive policy or current situation is proved
16 by the testimony by the Governor of the Tokyo Pre-
17 fecture Kosaka Yasumas,³ who was then the senior
18 governor and by the affidavit of SUZUKI, an accused.⁴

19 The evidence of TAKEBE like that of Pu-Yi
20 was given while he was imprisoned. It is left to the
21 Tribunal's fair judgment to what extent TAKEBE's
22 statements should be credited with probative value,
23

- 24 1. Ex. No. 2218
25 2. Ex. No. 670
3. Ex. No. 3715, Tr. 36,960
4. Ex. No. 3605, Tr. 35,173-9

1 in view of the circumstances wherein he found him-
2 self.

3 228. ARAKI's alleged talk at the Osaka
4 Political and Economic Research Association¹ was
5 reported by the Japan Advertiser. This was origin-
6 ally reported by the Domei News Agency on hearsay,
7 and a hearsay report of the Domei's article was re-
8 printed by the Japan Advertiser. Being a report
9 based upon double hearsay, the significance of the
10 article is utterly incomprehensible.

11 229. At the roundtable conference reported
12 by the Kokumin Shimbun,² ARAKI explained the then
13 prevailing situation by drawing a parallel between
14 the Government's lack of fixed policy for effecting
15 control over the Army and the Navy and its similar
16 lack of a definite policy during the Siberian Affair.

17 Due to the state of affairs at that time,
18 the newspaper was unable to report his talk as it was
19 actually spoken, but made various alterations. As
20 the result the writeup became entirely different
21 from what ARAKI actually said.³

22 230. Exhibits Nos. 746 and 746 relate to
23 notes exchanged between Japan and the Soviet Union

- 24 1. Ex. No. 671-A, Pros. Doc. 2527, Tr. 7,334
25 2. Ex. No. 667, Tr. 7,309-10
3. Ex. No. 3170, Tr. 28,508

1 concerning the Soviet proposal in connection with
2 the Japan-Soviet Non-Aggression Pact of 1933.

3 First of all, international issues were
4 handled by the Foreign Office.

5 In the individual phases of SHIGEMITSU and
6 HIROTA those circumstances were dealt with and
7 clarified.

8 The situation is explained under Par. 14-A
9 of ARAKI's affidavit.¹

10 Now there further is no denying that the
11 Third Internationale was then intensifying its world
12 Bolshevization policy. Hence Japan felt a consider-
13 able misgiving and harbored a strong suspicion.²

14 I shall now turn to the first paragraph on
15 the following page:

16 The two exhibits, 746 and 747, are the
17 notes exchanged between the two governments showing
18 that the proposed Non-Aggression Pact was not con-
19 cluded immediately. They cannot be the evidence to
20 prove that the Japanese Government at that time
21 harbored aggressive intentions. Subsequent events
22 bear out that Japan's suspicions were well founded.

23 I shall omit the balance to the middle of
24 the paragraph 231.

25 1. Ex. 3161, Tr. 68,173 2. Ex. 3161, Tr. 28,173

1 Contents of the documents 701 and 702 relate
2 to matters under the jurisdiction of the Army General
3 Staff, and the War Minister had no relation whatso-
4 ever with them.¹

5 As witnesses KAWABE and KASAHARA testified,
6 the documents represent results of private researches
7 made between the section heads. It was customary
8 for members of the sections concerned of the Army
9 General Staff to draw up drafts covering subjects
10 they were interested in, and to conduct researches in
11 them. Results of such researches were sometimes sub-
12 mitted to their superiors for reference. Both wit-
13 nesses testified they did not even show the documents
14 in question to their superiors.²

15 In view of the contents of the documents it
16 is perceivable that the Japanese Army at that time
17 was in no position to make use of the drafts in any
18 way beyond what the witnesses testified. In our
19 submission, ARAKI who then held the Army Ministership
20 should not be held responsible for the documents.

21 232. As has been stated, ARAKI himself did
22 not write the "Japan's Mission in the Showa Era."

23 I shall delate until the first paragraph on
24 the next page.

25 1. Ex. 3161, Tr. 28,173 2. Tr. 7,633

1 Under the circumstances, ARAKI cannot assume
2 responsibility for separate sentences contained in
3 the book. Rather, his idea should be grasped by
4 reading the book as a whole.

5 Omit the next paragraph.

6 Exhibit No. 760 summarizes the following
7 facts:

8 Around 1921 and 1922 Soviet troops forcefully
9 occupied Outer Mongolia under the pretext of suppress-
10 ing anti-communistic forces in Mongolia, and estab-
11 lished a communistic government. In 1924 the Outer
12 Mongolian Republic was established under the pro-
13 tection of the Soviet Union, and declared its inde-
14 pendence from China. Subsequently the new Republic's
15 influence threatened to extend to Inner Mongolia,
16 Sinkiang, and even to Manchuria. Nevertheless, no
17 country offered a protest against the practice, and
18 it was feared that a general disturbance would con-
19 sequently set in in Asia.

20 I quote from the Lytton Report: "... Japan-
21 ese misgivings have been still further increased in
22 the last few years by the predominant influence ac-
23 quired by the USSR in Outer Mongolia and the growth
24 of communism in China."
25

1. P. 68 of the Lytton Report.

1 Later the Soviet-Mongolian Alliance was
2 formed, and the region was practically annexed to
3 the Soviet Union.

4 I shall start with the second sentence in
5 the next paragraph.

6 ARAKI thought, therefore, such state of af-
7 fairs should be depicted clearly in order to insure
8 peace in Asia, and to safeguard Japan from the impend-
9 ing danger. He stated also, should the Bolshevization
10 of Asia endanger Japan's national polity, counter-
11 measures should have to be adopted. If Outer mon-
12 golia was to become independent, it should negotiate
13 with China with the view toward acquiring a fully
14 independent sovereignty, he said. For, to allow the
15 affair to remain indefinite, he thought, was to
16 create the cause of future evil. ARAKI was relating
17 the actual state of things then existing in Asia.
18 His statement of facts should not be interpreted as
19 revealing his aggressive intentions toward the Soviet
20 Union. Ex. 760.

21 233. In his opening statement, the Soviet
22 prosecutor declared that Japan since long past has
23 been planning aggression against Russia. Going back
24 to the Sino-Japanese War, he contended that all inter-
25 national complications since then have resulted from

1 Japan's aggressive intentions. He asserted that the
2 Manchurian Incident was but an extension of Japan's
3 aggressive action.

4 The prosecutor regarded all measures Japan
5 and Manchukuo adopted for the preservation of peace
6 and the promotion of culture in Manchuria as prepara-
7 tions for an attack against the Soviet Union. The
8 prosecutor charged ARAKI as one of the alleged con-
9 spirators who planned such an act.

10 His allegation is based upon the aforemen-
11 tioned evidence of insufficient probative value; and
12 in addition he made an abstract statement.

13 234. Attention of the Court is called to
14 the fact that the military facilities Japan requested
15 Manchukuo to construct within her territories were
16 limited strictly to those of a defensive nature.¹

17 235. Soviet-Japanese negotiations were con-
18 ducted on friendly terms during the Manchurian Inci-
19 dent as well as on the occasions of suppressing un-
20 lawful elements in Kolumbuir and Northern Manchuria,
21 while ARAKI held the Army Ministership. That friendly
22 relations existed between the two countries, neither
23 of the two constituting menace to the other, is tes-
24 tified to in the evidence of the witnesses ENDO and

25 1. Tr. 2929, Ex. 233

TAKEDA, as well as in ARAKI's affidavit.

236. The contention by the Soviet prosecutor that on the occasion of the sale of the Chinese Eastern Railway to Japan, she purchased the line cheap by repeatedly interfering with the operation of the line, and subjecting railroad employees to threats, appears to be nothing but a pretext thought up at this late date.

It is carrying the imagination too far to say that after the Manchurian Incident Japan especially incited the Chinese to do that.

In Chapter II of the Lytton Report, under Item 3, "Relations with Russia," there appear the following accounts relating to clash of interests between Chang Tso-lin's regime and the Soviet Union.

I quote: "After the adherence of Manchuria to the Nanking Government, nationalist spirit increased in strength, and the efforts of the USSR to maintain predominating control over the railway were, more than ever before, resented ... and many important Soviet organizations and enterprises were forcibly closed down ... many Soviet citizens were arrested, and some were deported."

1. P. 66

1 I shall omit the next four paragraphs.

2 V. Defense Against Bolshevization.

3 238. (1) As has already been stated, ARAKI
4 had no concern about communistic theories being put
5 into practice within the Soviet Union. As a Japan-
6 ese national, he was unable to accept the Third
7 Internationale's policy of Bolshevizing the world,
8 and was always on guard against it.¹

9 239. He was extremely worried about the
10 two attempts at high treason by communists, at
11 Toranomom in 1922 and Sakuradamon in 1932, and
12 started to keep watch over communistic activities in
13 Japan, lest it should endanger Japan's national
14 polity.

15 The Kokuhonsha in question was first estab-
16 lished during this period and for the very reason
17² aforementioned.

18 240. "The Basic Plan for Emergency Measures"³
19 which ARAKI submitted to Premier SAITO when he re-
20 signed as the War Minister, proves this point.
21 ARAKI advocated in this plan that rightist and left-
22 ist political offenders should equally be granted
23 amnesty, thereby popular sentiment should be changed
24

- 25 1. Ex. 3161, Tr. 28,173
2. Ex. 3161, Tr. 28,172
3. Ex. 3166, Tr. 28,451

1 I shall omit the next four paragraphs.

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- 24
25 1. Ex. 3161, Tr. 28,173
2. Ex. 3161, Tr. 28,172
3. Ex. 3166, Tr. 28,451

completely.

1 We submit that this fact proves that unlike
2 old-fashioned, rightistic ultra-nationalists, ARAKI
3 is broadminded, and can be in accord with anybody
4 in the world, in accordance with the Imperial wishes
5 for putting into practice the principle of universal
6 brotherhood. Even though ARAKI did not accept the com-
7 munist theory of bringing pressure upon human
8 rights and human freedom, he maintained no idea to
9 interfere with communism.
10

11 I shall omit paragraph 241.

12 245. Army appropriations during the period
13 when ARAKI was the War Minister (1932-1933) were
14 approximately 170,000,000 yen annually, exclusive of
15 the expenditures covering the Incident. The amount
16 was little more than the appropriations during a
17 normal year. It is noted that the expenditures
18 covering the Manchurian Incident were approximately
19 150,000,000 yen for each of the two years.
20

21 Though, under the provisions of the Japan-
22 Manchukuo Protocol, Japan's obligations for national
23 defense increased, with corresponding increase in the
24 number of garrisons in Manchukuo, there was no material
25 change in the size of the Japanese Army.

1. Tr. 28,193

1 Japan and Manchukuo entered into the agree-
2 ment of common defense; however, Manchukuo's mili-
3 tary facilities were constructed for defensive
4 purposes, and had no aggressive characteristics. It
5 is customary for a newly established state with its
6 aspirations for civilization to construct additional
7 railway lines, to unify communication facilities,
8 and to develop natural resources. This is also
9 necessary for national defense purposes.

10 These considerations should suffice to dis-
11 prove the prosecution's contention that Japan had
12 planned to make Manchuria the base for her alleged
13 aggression against the Soviet Union. The facilities
14 actually established did not exceed the scope of
15 the normal national defense and cultural requirements.

16 In view of the atmosphere then prevailing
17 in the Soviet Union, it was expected her ideological
18 propaganda directed toward Manchukuo would precede
19 an armed invasion, and precedence was given to the
20 organization of precautionary measures against such
21 propaganda. Even the number of the troops stationed
22 in Manchuria at that time was not increased in any
23 appreciative degree.
24

25 246. According to the "Table of Growth of
Strength of the Kwantung Army and the Japanese Army

1 as a Whole,"¹ it is quite evident that the size of
2 the Japanese Army and its equipment during the time
3 of ARAKI's War Ministership were extremely insuffi-
4 cient. So much so, that it was out of the question
5 for Japan to attempt the invasion of either China or
6 the Soviet Union. Moreover, the undersized Army was
7 left in that state for several years. It was consid-
8 erably later that the Army was expanded in any way
9 at all.

10 Considering all the facts abovementioned, we
11 submit that the prosecution's charge concerning the
12 Soviet Union is totally unfounded.

13 Chapter VII. ARAKI's retirement from politi-
14 cal life.

15 247. After the resignation en bloc of the
16 HIRANUMA Cabinet, ARAKI severed all connections with
17 political life. However, as he was a cabinet coun-
18 cillor in the ABE and YONAI Cabinets, although it
19 was a post in name only, some explanation is believed
20 necessary in this connection.

21 248. Cabinet Councillor in the ABE Cabinet.

22 ARAKI and ABE were classmates during their
23 Military Academy days and were close friends. When
24 ABE formed his cabinet and requested him (ARAKI) to

25 1. Ex. 706, Tr. 7,531

1 be a consultant for the purpose of settling the China
2 Affair, ARAKI could not out of sheer obligation de-
3 cline. Furthermore, as the system of cabinet coun-
4 cillor was already substantially powerless and mere-
5 ly an existence in name only, ARAKI consented.

6 249. After his assumption to the post of
7 cabinet councillor, ARAKI not even once met the
8 prime minister in connection with the current situa-
9 tion.¹ As the ABE Cabinet resigned en bloc (16 Janu-
10 ary 1940) only a month or so after ARAKI became
11 cabinet councillor (1 December 1939) there was not
12 even an opportunity afforded for a meeting between
13 them.

14 I shall omit paragraph 250.

15 251. In the formation of his cabinet,
16 Premier YONAI then requested ARAKI to take the port-
17 folio of Home Affairs. When the YONAI Cabinet was
18 being formed, YONAI made an earnest appeal to General
19 ARAKI through ISHIWATA to take the office of Home
20 Minister, but he declined it on the grounds that he
21 could not render any service as the trends of the
22 times were against him.² Special attention is called
23 to the words "he declined it on the grounds that he
24 could not render any service as the currents of the
25

1. Tr. 28,215 2. Tr. 28,508

time were against him," for from this it becomes

1 quite clear that ARAKI held views contrary to the
2 general trends and to those of the responsible
3 leaders of that time and was completely disassociated
4 from the political circles and the military.

5 252. Thus it was that ARAKI was then re-
6 quested to accept a cabinet councillorship, as he
7 had declined to become the Home Minister. So as he
8 had accepted this minor position in the ABE Cabinet,
9 and considering that if he declined even to become a
10 cabinet councillor, even though it would be in name
11 only, such an attitude might not only impair their
12 friendship, but might also possibly lower YONAI's
13 prestige considerably in political circles, he
14 (ARAKI) decided to accept. However, ARAKI only con-
15 ceded to accept in so far as he was assured that his
16 name alone would be sufficient, and as heretofore
17 mentioned the cabinet councillors continued an
18 inactive existence and ARAKI rarely attended any of
19 their meetings.
20 ¹

21 Thus, as the foregoing will abundantly
22 clarify, ARAKI did not participate in any way in the
23 then current situations while cabinet councillor in
24 either the ABE or the YONAI Cabinets.

25 1. Ex. 3161, Tr. 28,217

1 253. ARAKI declines cabinet councillorship
2 in Second KONOYE Cabinet.

3 254. When Prince KONOYE undertook to organ-
4 ize the Second KONOYE Cabinet he sent Chief Cabinet
5 Secretary TOMITA to ARAKI to request the latter to
6 become a cabinet councillor.¹ When thus approached
7 ARAKI pointed out that Prince KONOYE had already
8 decided on the establishment of the Imperial Rule
9 Assistance Association as a domestic move and on the
10 conclusion of the Tripartite Alliance as an inter-
11 national move and, he, therefore, declined the
12 offer saying that there was no way of his giving any
13 assistance as a cabinet councillor since these two
14 vitally important questions for Japan had already
15 been decided upon.

16 255. Greatly taken a back by the report
17 brought by Chief Cabinet Secretary TOMITA, Prince
18 KONOYE personally called on ARAKI's residence and,
19 although he explained that the Imperial Rule Assist-
20 ance Association was to be an organization which
21 banded together the powerless political parties and
22 that the Tripartite Alliance was to be concluded in
23 order to prevent American participation in war as
24 there was every danger that such participation would
25

1. Ex. 3172, Tr. 28,546

1 lead to a world war, ARAKI replied that whatever may
2 be the Prince's views the actual development of the
3 situation would negate his ideals and drive Japan
4 both domestically and internationally into fascism
5 and advised with utmost candor that the Prince was
6 playing with fire that may lead to the utter de-
7 struction of the country. Five hours of persuasive
8 arguments proved fruitless and ARAKI refused to join
9 the cabinet. Since that time the relations between
10 the two, which had been intimate and friendly, were
11 broken off.¹

12 256. The prosecution alleges that ARAKI
13 desired an attack on the United States and Great
14 Britain and has attempted to tie this up with the
15 Tripartite Alliance. We believe it is sufficient to
16 allude only to the above without referring to a large
17 amount of testimony (such as that of ARITA and
18 ISHIWATA) to meet the prosecution's contention. The
19 SAIONJI-HARADA ² Memoirs show that already from the
20 midst of the Manchurian Incident ARAKI's attitude
21 toward the United States, Great Britain and the
22 other Powers has been that of cooperation and
23 friendly intercourse.
24

- 25 1. Ex. 3172, Tr. 28,550
2. Ex. 3766 and 3767

Chapter VIII. Comments on the Prosecution's
Evidence.

ARAKI is well versed in the national literature of Japan and the Chinese classics. Hence, because his addresses and writings are profound in thought and full of flowery rhetoric, they are difficult of full comprehension, in some cases by even the Japanese themselves.

I shall proceed to the ~~first~~ paragraph on the next page.

A serious case for the many fundamental mistakes in the prosecution's interrogations of ARAKI is to be found in the prosecution's lack of preliminary understanding (at the time the interrogations were taken) of the current situation in the various periods concerning this defendant and in the lack of competence on the part of interpreters. The difficulty of understanding ARAKI's diction may be regarded as another reason why he could not make himself sufficiently understood by them.

I shall now turn to page 291, paragraph 258.

258. Now, the prosecution, following its usual practice, has picked up just a few lines relating to general situations and has used them as data upon which to base its charges for certain acts and

1 conspiracy. The prosecution overlooks ARAKI's main
2 point on the enhancement of morality which has noth-
3 ing to do with aggression or hegemony as can be
4 clearly appreciated by a reading of entire texts.

5 261. All excerpts taken by the prosecution
6 from "To All the People of Japan"¹ are parts of a
7 speech made by ARAKI when war was going on.

8 To talk on the question of morality in the
9 midst of war is like pouring water on burning ob-
10 jects, and although the government authorities dis-
11 approved, ARAKI adamantly continued to teach morality.
12 On page 27 in Court exhibit 3164-A, ARAKI is quoted
13 as saying:

14 "Needless to say, the Imperial Army's
15 spirit lies in exalting Kodo (Way of the Imperial
16 House) and spreading the national virtue. That is
17 to say, every bullet must be charged with Kodo and
18 the point of every bayonet must be infused with the
19 national virtue. If there be anyone who opposes
20 Kodo or the national virtue he should be given an
21 injection with this bullet and this bayonet."

22 From this it is clear enough that he is
23 speaking of the bayonet and the bullet of the Im-
24 perial Army in the moral sense. This is also a reply
25 to Par. AA-84 of the prosecution's summation.

1. Ex. 3164-A

I shall omit the next paragraph.

1 262. Presentation of excerpts as evidence
2 does not provide data upon which to judge ARAKI's
3 true intentions.
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1 When an excerpt is taken omitting the foregoing
2 passage and the meaning of the extracted portion is
3 not truly understood, then it offers every chance that
4 it would be interpreted in an unfavorable light.

5 In the aforementioned exhibit 3164-A it is
6 pointed out -- I skip nine lines -- the passage ex-
7 pressing the fact that peaceful conditions were first
8 and foremost was willfully left out. For this reason
9 the excerpt, taken alone, gives rise to the apprehen-
10 sion that the meaning of the main text may be taken as
11 warlike.

12 However, a passage just prior to that quoted
13 by the prosecution from page 84 of the same court ex-
14 hibit was omitted. The omitted passage says,

15 "The attitude of our country consistently
16 and unchangingly lies in the independence of
17 Manchuria for the sake of peace in the Far
18 East and peace in the world."

19 Because of this omission, ARAKI's true meaning is mis-
20 understood to an extreme degree.

21 Although only a few examples have been cited
22 above, the same can be said of nearly every piece of
23 evidence presented by the prosecution. The prosecution,
24 by presenting excerpts into evidence, has obscured the
25 meaning of the entire text of documents. Although this

1 is a disadvantage to all the defendants, ARAKI espec-
2 ially is placed at a serious disadvantage for the reas-
3 ons hereinbefore set forth.

4 263. Evidence which has no Reliability.

5 The reliability of court exhibit No. 3164
6 produced by the prosecution just referred to cannot
7 be established. On 12 September 1947, ARAKI, during
8 the course of his testimony, stated that this book
9 was not written by him, but by a man named SHIBUI,
10 a teacher of a normal school, that in editing the
11 book SHIBUI showed a commercial interest and failed to
12 carry out ARAKI's request that the source of talks and
13 articles and their dates be clearly mentioned and that
14 he had therefore reprimanded SHIBUI for having failed
15 to carry out these instructions. He further stated,
16

17 "I should like to state further
18 that inasmuch as I did not actually write
19 the article by my own hand, some phraseology
20 used is sharp.

21 "With regard to press articles and magazine
22 articles, I think that for the purpose of sel-
23 ling these publications for commercial purposes
24 the state of affairs in the country were taken
25 into consideration and, in parts, strong words
were used. But generally speaking, although

1 I have not glanced through and read the entire
2 book ('and therefore I do not know, I think')
3 the thoughts I had in mind were substantially
4 reproduced.¹"

5 To suddenly present to the defendant an
6 edited collection of potpourri made by someone else
7 that does not give any sources or dates and to ask
8 him for an explanation; and, moreover, to ask him for
9 an immediate reply after showing him only parts thereof
10 in the manner pointed out in the previous section --
11 this cannot be regarded as a practice which completely
12 respects the rights of an accused.

13 Especially if one reads the preface, one will
14 note that SHIBUI states with respect to the circum-
15 stances attending the editing of the book and its con-
16 tents that the book is defective.

17 Prosecution exhibits Nos. 222² and 223 were
18 offered in evidence as records of cabinet meetings.
19 As the originals show, they are documents typewritten
20 on Foreign Office stationery and are, of course, not
21 records in the files of the cabinet. According to the
22 testimony of YOKOMIZO, Mitsuteru, Chief of the General
23 Affairs Section of the Cabinet at the time, records
24 pertaining to cabinet meetings were made by the Cabinet
25

1. T. 28,368

2. Pros. Doc. No. 1415-B

1 Secretariat.¹ Furthermore, there is not a single sig-
2 nature on this set of documents and there is nothing to
3 show, presuming that the meetings took place, how many
4 decisions were made, how the matters were handled,
5 whether revisions were made, or who was present or
6 what kind of arguments. Moreover, from the face of
7 the documents it has no form as a document pertaining
8 to a cabinet meeting and ARAKI did not identify it.
9 That such unreliable documents cannot have any authen-
10 ticity is abundantly clear.

11 264. Prosecution's Interrogation of ARAKI.

12 The prosecution, prior to the issuance of the
13 Indictment, interrogated the suspects and tendered in
14 evidence the interrogatories then taken. With regard
15 to ARAKI, they were presented as exhibit No. 187, and
16 excerpts in exhibits Nos. 188-A, B, C, D and E, No. 229
17 and exhibits Nos. 2216 and 2222. However, as ARAKI
18 stated in his affidavit, the interrogatories for the
19 most part were no more than notes taken by the prose-
20 cutor; he was never asked to give an oath; there were
21 no stenographic records taken; he was not shown what
22 had been written nor was anything read to him; and he
23 was not asked to sign anything. Not only were there
24 many mistranslations due to the lack of competence on
25 1. T. 28,537

1 the part of the interpreters, but there were many ob-
2 vious errors of fact. The prosecution's grounds for
3 offering this evidence are probably based on Article 13
4 (a) of the Charter, to-wit: "All purported admissions
5 or statements of the accused are admissible." However,
6 Article 13-C-(d) stipulates "An affidavit, deposition
7 or other signed statement." In this case, it will in
8 all probability be contended that reference is made to
9 statements generally and that they are admissible in
10 the case of the accused under 13-A whether the state-
11 ment is an affidavit or not. However, we cannot accept
12 this view, because all civilized nations are agreed that
13 in criminal proceedings the rights of the accused should
14 have the utmost protection. In every state in the
15 United States the deposition of the accused is handled
16 most carefully and when the accused himself is a wit-
17 ness he is treated in the same manner as a third party.
18 In England, also, the rule is applied that a deposition
19 unfavorable to the accused cannot be used as evidence
20 if the accused so states and does not approve it. In
21 Japan, too, the country of the accused, when a proces
22 verbal or protocol is drawn up at the public procura-
23 tor's office, a clerk of the court is made to attend
24 as a witness and the document is read to or by the
25 deponent who is then asked whether the contents are

1 correct or otherwise. When the deponent requests addi-
2 tions, omissions or changes, they are so recorded in
3 the document. It is stipulated that the deponent affix
4 his signature and seal to the document. (Article 51
5 of the Criminal Proceedings Law). Replies of this
6 accused to the prosecution in his own writing were
7 not accepted and it is submitted that it cannot be
8 called fair and just that an interrogatory not seen by
9 nor read to him should be in evidence. Hence, we can-
10 not but interpret Article 13-A as naturally being
11 restricted by Article 13-C (3) and that a deposition
12 by the accused as in the case of third parties requires
13 his signature. The prosecution should approve this
14 view for in the prosecution's exhibit No. 1981-A (Ex-
15 cerpt from TOJO, Hideki's interrogatory) it says: "The
16 above replies were read to the deponent who confirmed
17 that there were no errors." We say this because if
18 the prosecution holds the view that such extra care
19 is unnecessary it would not have troubled itself to put
20 in this superfluous statement.

21 Accordingly, we respectfully request the Tri-
22 bunal's consideration of the points which we have set
23 forth above.
24

25 I shall now proceed to 266 on page 300.

266. Disregard of Evidence Relating to the

Accused's Philosophy.

1 I shall omit the first paragraph.

2 The prosecution has pointed out that the ac-
3 cused had an aggressive philosophy and dared to carry
4 it out. In the case of ARAKI the prosecution says
5 that he propagated, taught and incited aggressive
6 thought. Since the accused's counsel insist that
7 ARAKI never propagated, taught or incited aggressive
8 thought and that what he explained was the Kodo philo-
9 sophy, it is necessary that the Kodo philosophy which
10 ARAKI propounded be explored by the Tribunal. The
11 prosecution objected to a document tendered by the de-
12 fense stating that it was useless to prove that a theft
13 was not committed on Friday against a charge that a
14 theft was committed on Thursday. The President remarked
15 at this time that it is only natural for a skillful
16 conspirator to express nice opinions especially to
17 newspapermen and rejected interviews given by War Min-
18 ister ARAKI to newspapermen of a third country.
19

20 However, we contend that responsible statesmen
21 stand on consistent principles and do not advocate ag-
22 gression on Thursday and give a speech contrary to that
23 on Friday. As a matter of fact, the prosecution has
24 not supplied any convincing data about the crime which
25

it claims was committed on Thursday.

I now shall proceed to page 305, last paragraph.

Now; if the Tribunal pleases, there follows immediately hereunder an explanation and refutation of a few of the salient points contained in the prosecution's summation. A complete refutation to the entire summation of the prosecutor is contained in Chapter 10 of this summation.

In reply to Paragraph AA-2 of the prosecution's summation wherein the prosecution assumes that simply because ARAKI held two important educational posts just prior to the invasion of Manchuria that he, therefore, must have known what the Japanese forces were doing in Manchuria, it is the contention of the defense that this assumption simply does not follow. It is purely a speculation on the part of the prosecution. There is not a scintilla of evidence to prove this fact, and, because of the lack of this proof we further contend that the Court must accept ARAKI's direct statement to the contrary, to-wit: that he first learned of the outbreak of the incident from newspapers.¹

We further contend that neither does it follow that ARAKI by accepting the post of War Minister

1. Ex. 3161, T. 28,126

1 accepted the responsibility for the invasion of Man-
2 churia, and as the incident had already been in progress
3 three months before ARAKI assumed the post of War Min-
4 ister, the Court might well conclude that ARAKI as a
5 patriot accepted this post for the purpose of putting
6 an end to it as expeditiously as possible. We invite
7 the Court's attention to the affidavit of MASAKI wherein
8 he quoted ARAKI as stating:

9 "As there is every danger that it
10 will develop into a regular war we must
11 leave no stone unturned in immediate saving
12 of this complicated situation."¹

13 Replying to Paragraph AA-4, the prosecution
14 seems to contend that ARAKI as an important member of
15 the KOKUHONSHA conspired together with the accused
16 HIRANUMA, KOISO, and others in regards to political
17 maneuvers.²

18 In regard to this matter, we believe that it
19 will be sufficient to understand the fact, as ARAKI
20 himself has testified,³ that the KOKUHONSHA was created
21 for the purpose of preventing terroristic actions against
22 the Emperor by members of the Communist party; the War
23 Minister at that time, General UGAKI, and the Chief of
24

25 1. T. 28,457

2. Exs. 3753 and 3754, HARADA-SAIONJI Memoirs

3. T. 28,332, line 18, to 28,333, line 12

the Naval General Staff, Vice Admiral SAITO, were both
1 directors of the KOKUHONSHA. Senior officers of the
2 army and navy in active service, judicial officers,
3 and civil governors, were secretaries, and in the lower
4 stratum there were many laborers and even women members.
5 The fact that army and navy heads were openly secre-
6 taries and that the War and Navy Ministers permitted it,
7 is in itself, sufficient proof that it was not a polit-
8 ical organization.

9
10 During the later period, i.e. after 1929 when
11 ARAKI was appointed Divisional Commander and left the
12 capital (curriculum vitae)¹ he had in reality no con-
13 nection with the KOKUHONSHA. Thus it is clear that
14 the prosecution's argument has no foundation. This
15 organization disbanded in 1934.

16 The entries in the HARADA Diary² tendered by
17 the prosecution merely contain slanderous gossip against
18 HIRANUMA arising from individual sentiments. ARAKI's
19 relation to HIRANUMA was not that of a follower. This
20 becomes evident when the situation at the time of the
21 HIRANUMA Cabinet is viewed. It has been proved that
22 even at such a critical period HIRANUMA never confided
23 in nor discussed matters with ARAKI personally.

24
25 1. Ex. No. 103, T. 688

2. Ex. No. 3753, T. 37,492; Ex. No. 3754, T. 37,560

1 With reference to Paragraph AA-5, it is dif-
2 ficult for us to understand the prosecution's allega-
3 tion that ARAKI must have known about the outbreak of
4 the Manchurian Incident which occurred in September
5 1931 because of an inference by the prosecutor that he
6 approved of an attempted conspiracy to overthrow the
7 cabinet in October, one month later. This again can-
8 not follow, and the prosecution once more defeats its
9 own contention when it specifically refers to the evi-
10 dence that ARAKI was the one who thwarted this con-
11 spiracy.

12 HASHIMOTO revealed his plans to ARAKI who,
13 because he was a man of character was to be, i.e., the
14 plan was to make him Prime Minister. Now is it logical
15 to assume that if ARAKI had any sympathy with this
16 plot that he would immediately berate and reprove the
17 instigators and then in addition inform the War Min-
18 ister so that appropriate action could be taken, and
19 which was taken when the conspirators were taken into
20 custody under arrest? ¹ As the prosecution contends that
21 the overthrow of the then prevailing cabinet was for
22 the purpose of supplanting it by one with stronger
23 policies concerning the Manchurian affair, it can be
24 logically assumed that ARAKI by his actions condoned
25

1 the more temperate policy of the WAKATSUKI Cabinet
2 and harbored no aggressive attitude toward the Man-
3 churian Incident.

4 Replying to AA-6, the prosecution again at-
5 tempts to convince this Tribunal by speculation rather
6 proof that ARAKI must have been aware by this time of
7 the agitation for the extension of the Manchurian Inci-
8 dent. "Must have been aware" - where is the proof?
9 Furthermore, where is the crime in the mere acceptance
10 of a War Minister post?

11 The prosecution continues to endeavor to create
12 inferences by innuendo in this same paragraph by stat-
13 ing that ARAKI was appointed to this post in a manner
14 contrary to customary procedure. ARAKI himself not
15 only denied this¹ but we invite the Court's attention
16 to the testimony of MINAMI when on re-direct examina-
17 tion he stated that as outgoing Minister of War he
18 recommended his successor ARAKI.²

19 Continuing to prosecution's Paragraph AA-7
20 and referring back to the language used in reply to
21 AA-6, that the prosecution was attempting to sway
22 this Tribunal by inferences, by innuendo, such as,
23 ARAKI was appointed War Minister because he, of all
24 people, could control the young officers, the
25

1. Ex. 3161, T. 28,127

2. T. 20,101

prosecution has again defeated its own conclusion when
1 they attempt to prove another point by contradicting
2 themselves by another reference to the record that
3 ARAKI could not control the young officers.¹

4 The prosecution states that INUKAI's reason
5 for appointing ARAKI War Minister was because he be-
6 lieved ARAKI could control the young officers and there-
7 fore there would be "no gulf between him (INUKAI) and
8 the young officers." Now I point out to this Tribunal
9 the testimony of young INUKAI himself (the son of the
10 Premier) where on cross-examination he was asked the
11 following question: "If you know what kind of a
12 feeling Premier INUKAI entertained toward General ARAKI,
13 I would like to know." His reply to this question was:

14 "Frankly speaking he didn't seem to have
15 been thinking that General ARAKI, the then
16 War Minister, was a man who was able to control
17 all the younger officers who were in favor of
18 spreading incidents in Manchuria."²

19 In view of this, your Honors, it is our con-
20 tention that the conclusion drawn by the prosecution is
21 completely erroneous. Now again, it is pointed out to
22 this Tribunal the lengths to which the prosecution will
23 go in their endeavor to justify these charges against
24
25

1. T. 1,488-9; 1,541

2. T. 1,488

1 the accused ARAKI, when in this paragraph of their sum-
2 mation they refer to the First Shanghai Incident as
3 the "China Incident." It is further pointed out to
4 this Court that ARAKI was the only person responsible
5 for the complete withdrawal of all Japanese troops from
6 Shanghai despite severe criticism at home and contempt
7 abroad.¹ The sole reason for this withdrawal was for
8 the interests of peace as stated by ARAKI in the 61st
9 Session of the Diet in March 1932.²

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1. Ex. 3161, T. 28,141
2. Ex. 3167, T. 28,436

1 In Paragraph AA-8 concerning the Army Budget,
2 the prosecution states that ARAKI opposed the reduc-
3 tion of same.

4 Well, if your Honors please, it is a matter
5 of common knowledge that all branches of a government
6 at the end of a fiscal year endeavor to at least ob-
7 tain the same amount of money allotted for the previous
8 year, if only for the purpose of keeping their particular
9 department operating and I dare say in nine out of ten
10 instances, an increase is asked for. It is also a
11 matter of common knowledge that a government is always
12 desirous of cutting down expenses and in most instances
13 this requested increase on the part of a department
14 chief is made with the optimistic hope that he might
15 receive the same amount as the previous year's
16 allotment.

17 However, here the prosecution states that
18 ARAKI stated that doubling the budget would have been
19 a reasonable request. Of course, your Honors must
20 take into consideration that HARADA said this and it
21 is entirely the prerogative of the Tribunal to either
22 accept the veracity of ARAKI's statement which your
23 Honors have heard from ARAKI himself who took the
24 witness stand here ¹, or that of HARADA whose statements
25 (1. Ex. 3161, Tr. 28,193)

1 in our contention have been completely discredited.¹

2 Replying to prosecution's paragraph AA-9
3 wherein it is stated that troops were also sent to
4 Chinchow at the end of December, 1941, to relieve
5 Japanese nationals² and that MINAMI stated that the
6 occupation of Chinchow took place while he was absent
7 in Manchuria and on his return he, MINAMI, stated to
8 ARAKI that this act was contrary to policies
9 decided upon during his, MINAMI's, administration,
10 it is respectfully called to the attention of the
11 Tribunal that the defense upon redirect examination
12 of MINAMI endeavored to show that conditions in
13 Chinchow underwent a drastic change over a very
14 short period of time³ and that when it was stated to
15 the Court, the defense should like to clear this matter
16 up, the President stated:⁴ "Whether ARAKI's silence
17 gave consent is something we can't take into con-
18 sideration at all." Consequently, in view of this
19 statement by the President, it was decided by the
20 defense that there was no issue to meet. The
21 prosecution in paragraph AA-10 referring to the
22 occupation of the four provinces states that even
23 though ARAKI complained about the interpretation of
24

- 25 (1. Tr. 37,466 - 37,531
2. Ex. 3161, Tr. 28,193
3. Tr. 20,101
4. Tr. 20,102)

1 his remarks when he was interrogated in Sugamo that
2 it made no difference whether ARAKI said "to restore
3 law and order in or 'occupation'", for the prosecution
4 stated that it was difficult to see how law and order
5 could be restored in the four provinces without
6 occupying them. It is our contention that this
7 conclusion does not follow either. It should be
8 noted that in the preceding paragraph AA-9, the
9 prosecution refers to the restoration of law and
10 order in Harbin and it should be further noted that
11 law and order was restored there without Japanese
12 troops even entering the city but merely approaching
13 the outskirts of same and remaining there for such
14 period of time as was necessary for the aforementioned
15 restoration.

16 Part IX Re Rebuttal Evidence.

17 268. Exhibit No. 3754-A, Prosecution Docu-
18 ¹
19 ment No. 3150-ZA.

20 The document is introduced, according to the
21 prosecutor, because ARAKI denied the following facts.

22 (1) He was on intimate terms with HARADA.²

23 (2) The Kokyhon-sha was a political organ-
24 ization.³

25 (1. Tr. 37,560
2. Tr. 28,331
3. Tr. 28,332)

1 (3) ARAKI was an admirer of HIRANUMA.¹

2 Re No. 1, in examining Prosecutor Comyns Carr's
3 cross-examination of Witness ARAKI, we find this
4 statement: "Though HARADA was not specially on
5 intimate terms with me, he came to see me occasionally."²
6 He said that though they were not specially intimate
7 they met occasionally. This does not contradict
8 HARADA's statement: "I am also intimate with him."
9 Because in the Japanese language KON-I (intimacy) is
10 generally used with two meanings: common intimacy and
11 special, deep intimacy. Moreover, in the same docu-
12 ment, ARAKI's first name was misrepresented. This
13 shows that both of them were not really intimate.

14 Re No. 2. Regarding the Kokuhonsha, ARAKI
15 replied:

16 "The Kokuhon-sha was not a political
17 organization. . . the object of the organiza-
18 tion was that a similar incident like that of
19 NAMBA, Daisuke should not be allowed to occur
20 again and that in order to prevent such an
21 incident it should be known to the nation that
22 the Emperor had in mind the welfare of the
23 nation . . . I had not so much connection

24
25 (1. Tr. 28,332
2. Tr. 28,331)

1 with it, and I think perhaps it broke up
2 after issuing only a magazine."

3 And that document never says that the Kokuhon-Sha
4 had any political implication. On the contrary, ARAKI's
5 testimony shows that it was not a political organiza-
6 tion.¹ The Kokuhon-Sha aimed at a purely spiritual
7 movement, and not a political one. We believe this
8 is proved by the fact that Minister of War UGAKI and
9 General MAZAKI who were in active service were appointed
10 directors of the Kokuhon-Sha together with Admirals
11 KATO, SUETSUGU and OSUMI who were also on the active
12 list, despite the regulations of the Japanese Army
13 and Navy which prohibited any soldier or sailor on
14 active lists to participate in a political movement.²

15
16 In December, 1920, when the Kokuhon-Sha was
17 founded as is described in Exhibit No. 164, ARAKI was
18 not in Tokyo, but in Kyushu as Regimental Commander
19 of Kumamoto. It was in 1924 (as is stated in Part 1
20 of "Principle Actions" in exhibit No. 164) that
21 ARAKI joined the Kokuhon-Sha. On July 16, 1931, as
22 is stated in the last paragraph of "Principle Actions"
23 (this date coincides with that in HARADA's Memoir -
24 exhibit No. 3754), ARAKI was in Kyushu as the 6th

25
(1. Tr. 28,332
2. Ex. 164, Tr. 1,636)

1 Division Commander and not in Tokyo.¹

2 Re No. 3. ARAKI replied to the question as
3 to whether or not he was an admirer of HIRANUMA as
4 follows:

5 "I cannot understand the intention of
6 the question. I respected him as my senior
7 who had a very sound view regarding ideas."²

8 This clearly shows that ARAKI respected him in some
9 sense. Accordingly, the prosecutor tried, from his
10 misconception, to infer the falsehood of ARAKI's
11 alleged negative statement by that document. Needless
12 to refute, it is self-evident that the prosecutor's
13 assertion is meaningless.

14 269. Concerning exhibit No. 3762A³, Prosecutor
15 Comyns Carr stated that following reason for the
16 presentation of this document. He intends to disprove
17 ARAKI's statement that at the cabinet conference of
18 March 11, 1932, there was no decision to postpone the
19 recognition of Manchukuo as it would be a breach of
20 the Nine Powers Treaty.⁴ But in the transcript of
21 Prosecutor Comyns Carr's cross-examination on
22 September 12, 1947, of Witness ARAKI, he says:

- 24 (1. Ex. 103
25 2. Tr. 28,332
3. Tr. 37,598
4. Tr. 28,355)

1 "I am not sure whether or not it was
2 on the 11th day that the cabinet conference
3 was held, but I remember what you said. I
4 think such a policy was taken."¹

5 Therefore, unlike the prosecutor's assertion, he did
6 not deny the cabinet decision. Accordingly this
7 document is favorable to the accused in the follow-
8 ing points:

9 (1) That the government assumed prudent
10 attitude by postponing the recognition in view of
11 the international relations.

12 (2) An agreement was not reached even about
13 the following issues: If Chang Hsueh-liang's Army
14 attacked the new state, what should the Japanese
15 Army do? and whether or not it might be better for
16 Japan to assume the same attitude as that taken by
17 her at the time of the Fengtien-Chili War (A Chinese
18 civil war).
19

20 This strongly proves that Japan never planned
21 to make Manchukuo a puppet by recognizing and guiding
22 that country.

23 270. Re Exhibit No. 3765², the prosecutor
24 presented this document as rebuttal³ against ARAKI's

25 (1. Tr. 28,356
2. Tr. 37,609
3. Tr. 28,366)

1 testimony that he never talked with Prince KONOYE in
2 1932 regarding China's direct proposal for peace
3 negotiations. But in that day's transcript Witness
4 ARAKI says, not "I never talked with him about it,"
5 but "I don't remember it well."¹

6 Though this document is partly obscure, it
7 touches on ARAKI's thought. Therefore let us con-
8 sider it to ARAKI's advantage, as ARAKI wanted the
9 problem solved not through Japan-Chinese direct
10 negotiations, but through the League of Nations. He
11 didn't want Japan to wage war against the whole world,
12 but that as this question was already under discussion
13 in the League, Japan and China should not try to settle
14 it personally, but it should be settled openly by the
15 League after having heard Japan's position on the
16 Eastern situation. That Japan should not take such
17 a half-measure as settling the issue through personal
18 negotiations for fear Japan should become isolated
19 from other nations. That was ARAKI's assertion. It
20 was either KONOYE's or HARADA's misrepresentation to
21 state that ARAKI wanted to wage war against the world.
22 It was clear that ARAKI was not an advocate of
23 international isolation by the fact that he advocated
24 cooperation with England and America and other
25

(1. Tr. 28,366)

1 international friendliness, which will be shown in
2 the discussion relating to the following exhibits,
3 No. 3766 and 3767.

4 271. Concerning exhibit No. 3766A¹, the
5 prosecutor presented this document as rebuttal against
6 ARAKI's denial that he showed his national policies
7 to KONOYE and HARADA in November, 1932, and that
8 Finance Minister TAKAHASHI said that it would take
9 four or five years to fulfill and needed much
10 expenditure.² The transcript shows that when Prose-
11 cutor Comyns Carr asked, "Did you show your plan
12 regarding national policies, first to Prince KONOYE
13 and then to Baron HARADA in November, 1932?" Witness
14 ARAKI replied not in the negative, but, "I don't
15 remember it well."³

16 Though this document states that ARAKI met
17 KONOYE on the morning of October 30, it does not
18 say that they met in November. The prosecution
19 cross-examined ARAKI by disregarding the date or
20 deliberately distorting it because of ARAKI's con-
21 fusion of memory. Therefore ARAKI replied that
22 he did not remember, as he confused it with his Sugges-
23 tion of National Emergency Policies made in the summer
24
25 (1. IPS Doc. No. 3150-60A-61B, Tr. 37,612
2. Tr. 37,612
3. Tr. 28,391)